

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GENERAL TEAMSTERS, CHAUFFEURS
AND HELPERS, LOCAL 249 a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS (Various Employers)

and

Case 6-CB-11375

DONALD KRAUS, an individual

and

Case 6-CB-11376

KEVIN ROCHE, an individual

and

Case 6-CB-11377

MICHAEL G. KONDOS, JR., an Individual

David Shepley, Esq., for the General Counsel.
*Robert A. Eberle, Esq. (Jubelirer, Pass &
Intrieri, PC)*, of Pittsburgh, Pennsylvania, for
the Respondent.

DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL JR., Administrative Law Judge. These consolidated cases were heard before me in Pittsburgh, Pennsylvania, on August 27 and 28, and on October 30, 2007, pursuant to an original charge filed in Case 6-CB-11375 by Charging Party Donald Kraus on January 25, 2007, a first amended charge filed by him on June 22, 2007, and a second amended charge filed on September 14, 2007; an original charge filed in Case 6-CB-11376 by Charging Party Kevin M. Roche on January 29, 2007, a first amended charge filed by him on June 22, 2007, and a second amended charge on September 14, 2007; and an original charge filed in Case 6-CB-11377 by Michael G. Kondos Jr. on February 2, 2007, a first amended charge filed by him on June 25, 2007, and a second amended charge on September 14, 2007, against General Teamsters, Chauffeurs and Helpers Local 249 a/w International Brotherhood of Teamsters (the Respondent and/or the Union).

On June 27, 2007, the Regional Director for Region 6 of the National Labor Relations Board (the Board) issued his order consolidated these cases and complaint against the Respondent. The Respondent timely filed its answer to the complaint on June 29, 2007, essentially denying the commission of any unfair labor practices.

On September 18, 2007, the General Counsel filed his motion to amend the consolidated complaint. On October 23, 2007, by written order, I granted this motion.¹ All references to the complaint in this decision shall include the allegations contained in the consolidated complaint as amended.

The complaint essentially alleges that the Respondent violated Section 8(b)(1)(A) and Section 8(a)(3) and 8(b)(2) of the National Labor Relations Act (the Act) by either operating an exclusive hiring hall without utilizing any objective criteria in referring applicants to employment or a nonexclusive hiring hall, but in either case failing and refusing to refer for employment with Employer M.O.P. Productions (MOP) and Employer Smart People, Inc. Productions (Smart People), Charging Parties Kraus, Roche, and Kondos for reasons other than their failure to tender periodic dues and the initiation fees uniformly required for membership in the Respondent; the Respondent is also alleged to have violated the Act by attempting to cause and causing MOP and Smart People to discriminate against the Charging Parties.

At the hearing, the parties were represented by counsel and/or appeared pro se² and were afforded full opportunity to be heard, examine and cross-examine witnesses, and introduce evidence. On the entire record, including my observation of the demeanor of the witnesses, and after considering posthearing briefs by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

M.O.P. Productions is a corporation with an office and place of business in Pittsburgh, Pennsylvania, and is engaged in the production of movies and/or films. During the 12-month period ending December 31, 2006, M.O.P. Productions, in conducting its business operations, purchased and received at its Pittsburgh, Pennsylvania operations goods valued in excess of \$50,000 and/or rented goods and materials, the rental value of which exceeded \$50,000, directly from points outside the Commonwealth of Pennsylvania.

Smart People, Inc. Productions is a corporation with an office and place of business in Pittsburgh, Pennsylvania, and is engaged in the production of movies and/or films. During the 12-month period ending December 31, 2006, Smart People, Inc. Productions, in conducting its business operations, purchased and received at its Pittsburgh, Pennsylvania operations goods valued in excess of \$50,000 and/or rented goods and materials, the rental value of which exceeded \$50,000 directly from points outside the Commonwealth of Pennsylvania.

¹ Notably, my order was issued from chambers as, by October 23, 2007, I had received no response from the Respondent. However, on October 30, 2007, the date set for the resumption of the hearing, the Respondent filed its response in which it generally reiterated its denial of the substantive allegations contained in the amended complaint. (See R. Exh. 8.) In that regard, the Respondent is technically untimely. However, I have considered it and would find and conclude that the granting of the amendment is appropriate. First, the Respondent was on notice of the proposed amendment as of September 18, 2007. Second, the record as of October 23 was sufficiently developed factually to support the proposed amendment. Finally, on October 30, the Respondent had ample opportunity to adduce evidence regarding the amendment's allegations. Accordingly, in my view, under these circumstances, the Respondent is and was not prejudiced by my granting the proposed amendments.

² The three Charging Parties appeared without retained counsel or any other representative.

The Respondent admits, and I find, that MOP Productions and Smart People, Inc. Productions at all material times have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that it is and has been a labor organization within the meaning of Section 2(5) of the Act.

II. Background and Undisputed Facts³

When one casually thinks of the motion picture industry, Hollywood, California, naturally comes to mind. However, in point of fact, movies and various film projects, such as television series and commercials, are often shot on location in other States in and around the United States as well as in foreign countries.

The instant litigation involves the Union's connections with and role in the production or shooting of movies and other film projects in the Pittsburgh, Pennsylvania area over the past 20 or more years.

When a movie is scheduled to be filmed or "shot" in Pittsburgh (and elsewhere), the movie or production companies, as they are known, contact the local union and identify their requirements for employees to transport various production equipment and personnel (actors and others) from one location to the other. Regarding the movie industry, this was a basic function of the Union here—providing driver jobs—for the past 20 years to movie production companies in Pittsburgh.

Notably, the Union has over 4000 members within its geographical jurisdiction, but only a relative few work on movie jobs because, as can well be imagined, movies are not made with any particular regularity or in any particular location. The projects themselves are of varying, often short duration; therefore, the availability of driver jobs is therefore limited and often of short duration. However, in spite of these limitations, the movie driver jobs provide a relatively high wage rate with substantial opportunities for overtime hours. Movie drivers can earn a substantial income as long as the production lasts. As a result, certain members of the Union routinely sought work as movie drivers and, as a consequence, acquired over the years reputations and experience useful to the production companies that hired them.⁴ Alleged discriminatees and Charging Parties Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr. were part of this small cadre of members who sought and obtained work with the production companies in Pittsburgh over the years.

³ In this section, I have determined that certain matters, based on the testimony and other evidence, and the reasonable inferences drawn therefrom, are established facts. I have credited the pertinent testimony associated with these findings. Where there is contradictory testimony or other evidence, I have not credited this evidence.

⁴ It seems clear that movie drivers have to perform their duties somewhat differently from the usual drivers performing in other industries. Movie drivers transport star actors who have special requirements; they must be very reliable and timely in the performance of their duties because time lost is or can be very costly to the production; and experience with the movie-making business makes the shooting of the movie run smoother and more efficiently.

Transportation coordinators, discussed later herein, prefer experienced drivers and those possessing skills to drive specialized movie production equipment.

Once a movie company decides to shoot a film, it hires a producer who sets up offices in the location, here Pittsburgh, and selects a transportation coordinator who runs the entire transportation operation on the movie set. As such, the transportation coordinator serves as the production company's agent for hiring drivers for the production and is responsible for dealing with the Union to hire drivers for the vans, trucks, and specialty movie equipment.

Before any drivers are selected, however, the producer will meet with union officials to arrive at an agreement or contract stating the terms and conditions applicable to the employment of the drivers selected to work on the project in question. Once the contract is executed, the transportation coordinator is selected by the producer.

Oversight of the selected drivers is performed by a union-appointed transportation captain (and sometimes a co-captain) who reports directly to the transportation coordinator. On some productions, there may be a person selected by the producer to be the set captain who has no transportation responsibilities but may be subject to the Union's approval; the set captain also works under and at the direction of the transportation coordinator.

Wayne Shatkoff serves as the current union president and principal officer; he was elected to this full-time position in 2000 and at the time of the hearing was serving his third term. Robert (Bob) Puniak currently serves as the Union's business agent, having been elected to this full-time position in January 2003.

Shatkoff's responsibilities included the negotiation, administration, and oversight of the Union's 152 collective-bargaining agreements with various employers in the private and public sectors, including the movie industry.⁵ Up until some time in late 2004, Shatkoff solely handled the contract negotiations for the movie productions. In late 2004, he delegated these duties to Puniak who had no previous experience with the movie contracts and was basically unfamiliar not only with the members who were or had been regularly employed by the production companies but also their qualifications. Puniak also was essentially completely unfamiliar with the hiring referral processes of the Union.⁶

In the late summer and fall of 2006, three movie productions—Mysteries of Pittsburgh (MOP), Smart People, and Goose Bumps (also known as "The Haunting Hour")—came to Pittsburgh. MOP ramped up for production in early August and ran until about the end of September; Smart People ran from about early October through December; MOP and Smart People were produced by the same production company. Goose Bumps ran from mid-October through early November 2006. Goose Bumps is not directly involved in the instant litigation.

The Charging Parties were not hired to work on MOP and Smart People; however, they were all hired for Goose Bumps.

⁵ The Union is administered by an executive board comprised of president, vice president, secretary-treasurer, recording secretary, and three trustees. Those positions are full time and salaried, with the exception of the three trustees. The Union also employs two business agents and one business agent organizer who have assigned responsibilities for the various collective-bargaining agreements.

⁶ Prior to his election as business agent, Puniak worked as a truckdriver for a grocery chain. He had never held union office, served on any committee, or acted as steward. In fact, Puniak never attended any union meetings during the 21 years he has been a member of the Union.

A. The MOP and Smart People Contracts

The Union negotiated contracts for each of the three movies. The contract for MOP⁷ and Smart People⁸ are essentially identical, and for purposes of this litigation each contains the following contract language:⁹

SCOPE OF AGREEMENT

This Agreement shall be applicable to the classifications of employees, whose services are rendered in connection with the production of this Motion Picture, and who are on the payroll of the Producer or on the payroll of any corporation, partnership, individual, association or organization engaged in the production of this motion picture in which picture the Producer has any financial interest, all of whom will collectively be referred to as "Teamsters".

The term "Employee" as hereinafter used shall be deemed to mean an employee subject to the terms of this Agreement. The term "Motion Picture" as used herein shall be deemed to mean motion pictures of any type or nature produced by the Producer, whether made on or by film, tape or otherwise and whether produced means of motion picture cameras, electronic cameras or devices or any combination of the foregoing or any other means, methods, or devices now used or which may hereafter be adopted.

RECOGNITION

The Producer recognizes the Union as the exclusive collective bargaining representative of all classifications listed in this Agreement.

* * * *

EMPLOYMENT

(a) The parties hereto recognize the conditions in this industry require frequent hiring of drivers on a daily non-continuing basis. For this purpose, the Union shall maintain, for the conveniences of the Producer and the employee, a referral service which shall in all respects comply with all applicable provisions of law.

(b) The Producer agrees to request referrals for all drivers required for work covered by the Agreement from the Union. This provision is subject to the following conditions:

1. Drivers will be referred to the Producer from the Union on a non-discriminatory basis and such referrals will in no way be affected by membership or any aspect thereof.

2. The Union will choose the captain and co-captains.

⁷ See. GC Exh. 2, a copy of the entire MOP contract.

⁸ See GC Exh. 3, a copy of the entire Smart People contract.

⁹ The Goose Bumps contract was not adduced by the parties at the hearing. As noted, MOP and Smart People were produced by the same production company. Goose Bumps was produced by another production company. This case actually centers only on the Union's hiring activities regarding MOP and Smart People; as the Goose Bumps contract is largely irrelevant to this case.

3. The Producer or the Production Company or the Transportation Coordinator does not have the right to use any employment for transportation purposes other than Local 249 members.

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B. Events Prior to the MOP and Smart People Productions

Around August 3, 2005, Kraus, Roche, and Kondos in a joint letter wrote to the Teamsters International president, James Hoffa, and stated as follows:

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Dear Sir & Brother:

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We, the undersigned, of Local 249 Pittsburgh PA have worked in the movie industry for the past 10-20 years. During that time we have been proud to uphold to the standards set forth by our union and have fostered good relationships with the producers and directors of the movie companies filming in Pittsburgh. Because of this, the industry has flourished and Teamster members enjoy good jobs.

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Recently though, the President and Chief Operations Officer of Local 249 has embarked on a program to replace us with his friends and other non-union people. Most have little or no experience in the movie industry and jeopardize what we have fought so hard to build. On Wednesday, August 3rd [2005], Graduation Film Production, LLC will start shooting a movie and only 1 or 2 experienced people have obtained work from Mr. Wayne Shatkoffs [sic] actions.

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We are now requesting that you immediately appoint someone to investigate this matter.

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Fraternally yours in the Brotherhood of the Teamsters,¹⁰

On about August 15, 2005, in a follow-up to their earlier letter, Kraus, Roche, and Kondos again jointly wrote to Hoffa, stating:

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Dear Sir & Brother:

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This is a follow-up letter to a previous letter dated August 3, 2005 (Enclosed copy). The movie is now in production and Mr. Wayne Shatkoff's actions are certainly detrimental to future productions in Pittsburgh. We realize you are very busy, but we hope you can take the time to appoint an investigator into this matter, as this is about our livelihood. We really need your help with this matter. If you are not able to assist us would the IBT [sic, IRB] be our next option? Thank you in advance for your assistance with this problem.

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Fraternally yours in the Brotherhood of the Teamsters,¹¹

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¹⁰ GC Exh. 7.

¹¹ See GC Exh. 8.

On about August 23, 2005, Leo Reed, the International's director of Motion Pictures and Theatrical Trade Division, responded to Kraus, Roche, and Kondos, stating:

Dear Brothers Kraus, Roche, & Kondos:

The Motion Picture Division does not get involved in the autonomy of Local Unions.

However, if you feel that you have a legitimate issue, the International Constitution allows you to first address this issue with your Local Union Executive Board, and if you are not satisfied, your Joint Council, and on to the General Executive Board.

In the meantime, our International Representative Ron Schwab, will investigate this further. *He will contact Brother Shatkoff.* [Emphasis added.]

Fraternally,¹²

Sometime around June or July 2005, Roche wrote on his own behalf an undated letter¹³ to Leo Reed, stating (in pertinent part):

The city once known as "Hollywood on the Mon" is now in a position to reclaim that title. Recent State legislation and tax incentives have caused a resurgence of interest in Pittsburgh.

Unfortunately the current Teamster President, Wayne Shatkoff, is undermining the situation. The Production of "10th & Wolf" was met with adversity at their first meeting, and enjoyed the threat of a strike coupled with four grievances prior to the first day of filming. Potential Production Companies (Paramount in particular) have heard of the troubles and postponed location scouting in response.

I have been involved in the Film Industry since 1991 as a Teamster and attest that the actions taken by Mr. Shatkoff were unfounded, baseless and bogus.

Extortion was the word used by the Production Company.

His latest confrontation resulted in the Teamsters employed on this project being cut from twenty-one (van drivers and mechanics excluded) to between four and seven, depending on need. While this was happening a Commercial was also filmed here. Shatkoff bypassed experienced Film-savvy Teamsters and inflicted upon their effort a contingent of cronies with reputations that have brought reproach to the Local on numerous occasions.

Documentation is being prepared by the UPM of that project stating why they have no intentions of using Teamsters on all future endeavors.

Without the help of the International to rein in this megalomaniac Film Production in Pittsburgh is doomed. Watching a man ruin the reputation of this city's entire Film workforce is intolerable. In conversations with friends on the West Coast in Production . . . Pittsburgh is about to fall off the map.

¹² See GC Exh. 9.

¹³ See G. C. Exh. 13. Roche testified that he had a regrettable habit of not dating his letters but recalled that this was his first letter to Reed, written around the time of the shooting of "Graduation." Roche also stated that "10th & Wolf" was shot some time in 2003 or 2004 and he did not get a job on that production. Roche testified that the June/July letter was written in the context of the shooting of "Graduation," but his hostility to Shatkoff stemmed from Shatkoff's behavior during the shooting of "10th & Wolf."

Any suggestions on how to remedy the situation, before all is lost, need to come now.

Roche mailed an undated follow-up letter¹⁴ to Reed, stating:

Pittsburgh was once known as the Steel City, that will never happen again. During the 90's it gained recognition as Hollywood-on-the-Mon.

Recent legislation and incentives have put the city in a position to regain that Title.

If you had an ear on the rail you might have heard about the travails of our Local involving the Production of "10th & Wolf." The incident was precipitated by the lack of knowledge by our President, Wayne Shatkoff, regarding Film Production. Coming at them with a confrontational Freight mentality, as you well know, is an affront to a MovieMakers pussitivity [sic]. News of the problems with the Teamsters here is threatening future projects in Pittsburgh (i.e., Paramount in early spring; and another Robert Moresco feature in April).

The problem can be rectified if immediate action can taken to create a division in 249 dedicated exclusively to Film Production. There is a cache of experienced personnel in the Local that has the essential tools to deal with Production Companies. Nothing (including the Talent Driving jobs) would be given away.

The work wants us to reclaim the Title.

We need the work as well.

Mr. Shatkoff doesn't condone the nuances involved in diplomacy and civil negotiation, nor will he accept council from those in the local that have worked in the field for decades. The situation is such that if a Production Company has to meet with the President of 249 . . . they would prefer to go elsewhere.

This notice is not intended to bring reproach on Mr. Shatkoff. All I want is guidance and advice on how to keep Pittsburgh on the map.

If it is possible to break something to keep it working we need to know now, and how.

The Presidency is a respected position; a thoughtful Leader delegates competent Ambassadors that can most benefit his constituents.

Please help us in this endeavor to once again become Hollywood-on-the-Mon.

Neck-on-the-block, unwilling to watch the work run away.

On August 4, 2005, Roche filed a complaint against the Union with the Board in which he averred that:

Since on or about July 29, 2005, and at all times thereafter [Local 249], by its officers, agents and representatives, has, by preventing an employer from hiring Kevin Roche and by other acts and conduct, restrained and coerced employees of Graduation Film Productions, LLC in the exercise of the rights guaranteed in Section 7 of the Act.

On or about July 29, and at all times thereafter, the above-named labor organization, by its officers, agents and representatives, caused or attempted to cause Graduation Film

¹⁴ Roche testified that he sent this second letter about 2 weeks after the first letter because Reed had not responded. He estimated that both letters were sent around June or July 2005, in the context of the shooting of "Graduation."

Productions, LLC, an employer, to refuse to employ Kevin Roche in violation of Section 8(a)(3) of the Act.¹⁵

On September 2, 2005, Roche sent a letter to Local 249's secretary-treasurer, James W. Cowan, in which he stated:

The enclosure, I believe, conforms to the IBT Constitution (in writing, in duplicate, etc...).

Sir, I love and respect the Teamsters Union. Unfortunately the current President of Local 249 has, in my view, abused his Office and position. I find no other recourse than to pursue this matter to the fullest extent.

It is not my nature to blindside anyone. I trust that you now know how serious I am concerning the actions of Mr. Shatkoff, and will advise him accordingly regarding my intentions. Should his influence be such that due diligence is not applied, he should expect an appeal to the General President, General Executive Board, then the Ethical Practices Committee.

Be aware that these are only the internal remedies available, to me, as well.

I have no wish to cause Local 249 to be placed in Trusteeship. My understanding though is that if a matter like this reaches the Independent Review Board, Trusteeship becomes a distinct possibility. It is my sincere hope that this never gets to that point.

If I may suggest another remedy:

California, New York, and other states have independent Teamster Film Divisions. (RE: Local 399)

Perhaps we in Local 249 should follow that path and create an independent film division.

Of course Local 249 would be the parent organization; but the President of 249 would have no influence as to which Teamster Members (in good standing) can be considered for employment, or hired on the Productions.

Recent state tax incentives, and the tragedy in the Gulf States, are poised to make Pittsburgh "Hollywood-on-the-Mon" once again. The reputation of the Teamsters is extremely important in a Production Companies' [sic] location decision. (Local 249's reputation has been sullied during the production of "10th & Wolf" and "Graduation". I believe a correction would be prudent, and easily achieved by such a division.)

In Brotherhood of Teamster Unity and Ethics,¹⁶

On September 14, 2005, Cowan responded by letter¹⁷ to Roche, stating:

¹⁵ See GC Exh. 15. Roche testified that he was persuaded to withdraw this charge about 4 days after filing it by fellow union members who said his complaint should be handled internally. This charge is not alleged in the instant case.

¹⁶ See GC Exh. 17. This letter also included a copy of Roche's internal complaint against Shatkoff for, inter alia, essentially awarding jobs on the movie productions to his friends at the expense of members such as himself. Roche brought these charges under and pursuant to the IBT constitution. He also informed the Union that Klaus would be assisting him in the presentation of evidence in support of his allegations.

¹⁷ See GC Exh. 18.

Dear Brother Roche:

I have reviewed your charges filed against Brother, Wayne Shatkoff. The charges filed by you do not indicate the specific Constitution or By-Law violation alleged to have been committed.

Under Article XI, Section 2(a), of the Local 249 By-Laws provides that the charges must set forth the provisions of the IBT Constitution r Local 249 By-Laws allegedly violated "and the acts which allegedly constitute such a violation in sufficient detail to inform the accused of the offense charge, including, where possible, dates and places."

If you have questions concerning this matter, please do not hesitate to give me a call.

Fraternally yours,

In response to Cowan's letter, Roche responded by letter,¹⁸ stating (in pertinent part):

The following is just a summary [of] the violated Articles:

Under ART. XIX, Sec7 (b) *(2), *(5) pending interpretation, and *(11) relating to intimidation, strong-arm tactics, and the vagaries of extortion. Of course cronyism, favoritism, and the like will be addressed as well. [The offences that I claim Mr. Shatkoff engaged in will be specified in their proper format in a later correspondence.]

As noted at the 9/18/05 Union Meeting, the conflict of time limitations needs to be clarified:

The by-laws constrict the allegations to one year, the Constitution gives a two-year statute.

I utilize a daily journal in my position when working on films. Hence, I have records of everything that occurred since Mr. Shatkoff took office relating to Movie Productions.

In a previous letter I mentioned that I prefer to level the field prior to engaging the opposition. I have two trains running . . . one on the inside . . . one on the outside. External remedies don't have the same time frame restrictions as our Internal. Therefore the external was slowed to give Local 249, Joint Council, or The Teamsters International the opportunity to fix what I perceive is a major problem (this also applies with the IBT Constitution rules).

Should I prevail in either venue, the result would be that Mr. Shatkoff could not dictate which 249 Members are eligible to work on Movies made in Pittsburgh.

I also suggested a remedy that would cause me to cease taking action through hearings and investigations:

I urge you, as a Member of the Executive Board, to weigh the potential of what could be gained by creating a separate Film Division in Local 249.

¹⁸ See GC Exh. 19. This letter is also undated. Roche testified that he was responding to Cowan's September 14 letter and believe that he sent it to him by certified mail on September 23, 2005.

It would need to be structured in such a way that Mr. Shatkoff would have no influence as to which Teamster Members (in good standing) can be considered for employment, or hired on the productions. Every time a Producer comes in contact with Mr. Shatkoff the reputation of Local 249 suffers. For this type of Film Division to be viable a competent Agent would be required as well.

Our Local has the potential to remedy this situation –on its own . . .

All that is needed is reasonable and rational consideration of what could be lost and what could be gained.

Roche also corresponded with the secretary-treasurer of Teamsters Joint Council 40 (Charles Byrnes) and informed him some time between September 18 and 23, 2005, as follows:

Mr. Byrnes,

I had sent copies of my complaint to Members of Joint Council 40 via certified mail, I trust you know what's happening over at 249.

The complaint form I sent at the time was a synopsis, I thought it was all that we needed to get my case moving. It was rejected outright for lack of details concerning specific Constitutional and By-Laws Articles. I am in the process of compiling everything in the proper format now.

Meanwhile I would like to keep JC-40 apprised of all correspondence regarding this matter. I've attached a letter that I plan to send to the Secretary Treasurer, James Cowan, of Local 249 through certified mail on Friday 9/23/05.¹⁹

Sometime around November 18, 2005, Roche notified Cowan that he would not pursue his bylaws case with the Union's executive board in the context of his submission of a request for withdrawal from the Union.²⁰

Around August 25, 2006, Roche mailed a letter²¹ addressed to Shatkoff and Puniak, with his résumé attached in which he informed as follows:

Attached is the resume of Kevin Roche.

All experience pertinent to the Film Industry as a Talent or Van Driver from around 1991 to present is listed.

With "Mysteries of Pittsburgh" set to begin production under the auspices of Local 249 . . . I thought I would take this opportunity to remind you of my status as an experienced, qualified Member of the IBT that is able and available for work in my chosen field of employment.

¹⁹ GC Exh. 20. Roche testified that he did not send a copy of this letter to the Union's executive board or the International. This letter included a copy of Roche's previous response to Cowan.

²⁰ See R. Exh. 3. Roche testified that he submitted his withdrawal request around November 18, 2005, because he could not afford to pay dues as he was not getting work from the Union. He informed Cowan of his intentions regarding the bylaws case on this form.

²¹ See GC Exh. 21, a copy of his letter and Roche's resume setting out his experience as a driver on various film projects. Roche re-sent this letter and his resume to Shatkoff and Puniak on August 30, 2006 (GC Exh. 22). Notably, both Shatkoff and Puniak denied receiving these letters and enclosures.

Being the third most tenured (currently active) Member of 249 –cognizant of every aspect of Film work, should benefit the consideration of a referral to their Production Office for a position as a Talent or Van Driver.

Thank you,

On or about August 30, 2006, Kraus sent a letter²² to Shatkoff and Puniak informing them as follows:

Dear Brothers Shatkoff and Puniak;

I am aware that there is a movie in production titled “The Mysteries of Pittsburgh” currently using teamsters to provide their transportation services while they are shooting here. I am sending this letter to make you aware that as an experienced Teamster in movie production that I am interested in applying for work on this show. I am available immediately. Please contact me @ [telephone numbers redacted]. Thank You.

Sincerely yours in The Brotherhood;

III. The Unfair Labor Practice Allegations

The complaint as amended essentially alleges that during the material times,²³ the Union maintained a practice requiring that it be the exclusive source of referrals for employment as drivers with the two pertinent employers, M.O.P. Productions and Smart People, Inc. Production; that from July 25 through December 31, 2006, the Union operated an exclusive hiring hall without utilizing any objective criteria in referring applicants for employment; that the Union failed to refer for employment with MOP and Smart People, Kraus, Roche, and Kondos for reasons other than their failure to tender periodic dues and the initiation fees required for membership in the Union, all in violation of Section 8(b)(1)(A) of the Act.²⁴

The amended complaint in the alternative alleges that the Union operated a nonexclusive hiring hall and failed and refused (from July 25 through December 31, 2006, to refer to employment with MOP and Smart People, Kraus, Roche, and Kondos because they engaged in dissident union activities to include lodging complaints against the Union with the International and filing a charge against the Union with the Board, all in violation of Section 8(b)(1)(A) of the Act.

²² See GC Exh. 4. Kraus testified that the actual letter he sent to Shatkoff and Puniak was faxed to the Union on August 30, 2006, but he forgot to include the date on the submission. The exhibit adduced at the hearing included his handwritten date and the fax number to which he sent the letter.

²³ The material times for purposes of this litigation cover approximately July 25 through December 31, 2006.

²⁴ The complaint also alleges that the above-stated conduct also reflected the Union’s attempt to cause and cause the employers in question to discriminate against Kraus, Roche, and Kondos in violation of Sec. 8(a)(3) and (b)(2) of the Act.

A. Issues Presented

Did the Union operate an exclusive hiring hall for the drivers without utilizing any objective criteria in referring applicants for employment on movie productions, in violation of Section 8(b)(1)(A) of the Act?

Did the Union refuse to refer Kraus, Roche, and Kondos for employment on movie productions for reasons other than their failure to pay applicable dues and fees, and thereby causing movie producer employers to discriminate against them in violation of Section 8(b)(1)(A) and (a)(3) of the Act?

Did the Union operate a nonexclusive hiring hall and failed and refused to refer Kraus, Roche, and Kondos for employment on movie productions because they engaged in protected activities to include criticism of the Union (leadership) and Roche's filing a charge against the Union with the Board?

B. The Applicable Law

Section 8(b) of the Act provides in (pertinent part):

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7. . . . Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . . or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

It is well established that a union that operates an exclusive hiring hall job referral system or arrangement may not discriminate against and among employees in the way it refers employees for employment. *Laborers Local 334 (Kvaerner Songer)*, 335 NLRB 597 (2001).

Under an exclusive hiring hall, basically the employer and the Union will be the sole source of referral of applicants for employment with the employer. The employer thus gives up its right to hire from any other source.²⁵

The Board has long recognized that an exclusive hiring hall can lawfully be based on not only a written agreement between an employer and a labor organization²⁶ but also through oral understandings or course of conduct or practice between the parties.²⁷ In the case of a course of conduct or practice situation, the Board refers to these as a "defacto" exclusive hiring hall.

²⁵ *Ironworkers Local 46*, 320 NLRB 982 (1996), enf. denied 149 F.3d 93 (2d Cir. 1998).

²⁶ *Longshoremen ILWU Local 19 (Albin Stevedore Co.)*, 144 NLRB 1443 (1963).

²⁷ *Laborers Local 135 (Bechtel Corp.)*, 271 NLRB 777 (1984), enfd. mem. 782 F.2d 1030 (3d Cir. 1986); *Teamsters Local 174 (Totem Beverages)*, 226 NLRB 690 (1976); *Teamsters Local 293 (Beverage Distributors)*, 302 NLRB 403 (1991); and *Morrison-Knudsen Co.*, 291

Continued

The parties asserting the existence of an exclusive hiring hall arrangement bears the burden of establishing this fact. *Carpenters Local 537 (E. I. DuPont & Co.)*, 303 NLRB 419, 429 (1991).

A union that operates a nonexclusive hiring hall is not obliged to follow a nondiscriminatory referral system (*Teamsters Local 460 (Superior Asphalt)*), 300 NLRB 441 (1990), because in such a case, the union lacks the power to put jobs out of reach of the workers. *Carpenters Local 537*, supra, 303 NLRB 419.

Generally, defacto exclusive hiring halls may be determined where there is an implicit understanding between the employer and the union that an exclusive referral practice would be continued. *Electrical Workers Local 211 (National Electrical Contractors Assn.)*, 136 NLRB 1618, 1619 (1962), enfd. 322 F.2d 1022 (2d Cir. 1963).

A union operating a hiring hall—irrespective of whether it is exclusive or nonexclusive—owes referral applicants a duty of fair representation and is obligated to operate the hiring hall in a manner free from any arbitrary or invidious considerations. *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898 (1985). A union's refusal to assist a member in obtaining jobs may violate Section 8(b)(1)(A) when the referral is in retaliation for the member's having engaged in protected activity. *Plasterers Local 121*, 264 NLRB 192 (1982).

Furthermore, the Board in *Boilermakers Local 374 (Construction Engineering)*, 284 NLRB 1382, 1383 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988), noted:

This code of acceptable conduct necessary extends to the institution of any referral rules which the union adopts in accord with contractual provisions. In other words, the referral rules themselves, including any referral grievance mechanism, cannot be discriminatory or arbitrary. *Laborers Local 304 (AGC of California)*, 265 NLRB 602 (1982).

As noted, Section 8(b) states that a labor organization may not lawfully cause or attempt to cause an employer to discriminate against an employee. The Board has held that causing or attempting to cause discrimination need not exclusively take the form of an overt demand by the Union or the employer. Rather, the discrimination may be made out (under the circumstances) by the mere failure by the union to refer an employee for work without directing the employer not to hire him.

In fact, in *Electrical Workers Local Union 675 (S & M Electric Co.)*, 223 NLRB 1499 (1976), enfd. mem. 556 F.2d 574 (4th Cir. 1977), the Board noted:

The Board has consistently found a violation of Section 8(b)(1)(A) and (2) of the Act where a union has discriminatorily refused to refer an employee for employment pursuant to the terms of an exclusive referral system in effect between the union and the employer. Such union conduct, by its very nature indirectly induces the employer to refuse employment to that employee in violation of Section 8(a)(3). [Id. at 1499. (Footnote omitted.)]²⁸

NLRB 250 (1988).

²⁸ See also *Plumbers Local 420 (Carrier Corp.)*, 347 NLRB No. 53 (2006).

Where an alleged violation turns on motive, as in the instant case, the Board requires that the charge be analyzed under the framework set out in *Wright Line*, 251 NLRB 1083 (1968), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The *Wright Line* analysis is applicable to alleged violations of Section 8(a)(3) and (b)(1)(A).²⁹

Under *Wright Line*, the General Counsel must establish (1) that the employee/union member engaged in protected concerted activity; (2) the employer/union has knowledge of that activity; and (3) animus or hostility toward this activity was a motivating factor in the employer/union's decision to take the adverse action in question against the employee/union member.

Once the General Counsel establishes initially that the employee/union member's protected activity was a motivating factor in the decision, the burden of persuasion shifts to the employer/union to show that it would have taken the same action even in the absence of the protected activity. *Transportation Management Corp.*, 462 U.S. 393 (1983).

It is also well settled, however, that when an employer/union's stated motives for the actions are found to be false, the circumstances may warrant an inference that the true motive is one that the employer/union desires to conceal. The motive may be inferred from the total circumstances provided. Moreover, under certain circumstances, the Board will infer animus in the absence of direct evidence. That finding may be inferred from the record as a whole. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991).

Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, as noted, even without direct evidence. Evidence of suspicious timing (*Adco Electric*, 307 NLRB 1113, 1123 (1992), enfg. 6 F.3d 1110 (5th Cir. 1993)) and false reasons given in defense (*Electronic Data Systems Corp.*, 305 NLRB 219 (1991)) may support an inference of animus and discriminatory motivation.

The employer/union's burden under *Wright Line* requires it "to establish its *Wright Line* defense only by a preponderance of evidence." The respondent's defense does not fail simply because not all of the evidence supports it, or even because some evidence tends to negate it. *Merillat Industries*, 307 NLRB 1301, 1303 (1992).

To establish an affirmative defense, "[a]n employer [union] cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993), enfd. 99 F.3d 1139 (6th Cir. 1996).

Notably, the test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 fn. 2 (1984). The Board has held that, "[A] finding of pretext necessarily means that the reasons advanced by the employer [union] either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive" *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). In short, a finding of pretext defeats any attempt by the employer/union to show that it would have not referred the discriminatee absent his protected activities. *Golden State Foods Corp.*, 340 NLRB 382 (2003).³⁰

²⁹ See, *Plasterers Local 21*, id. at 192.

³⁰ With some license, I have bracketed the legal rubric here to make it conform to a discriminatory nonreferral case.

C. The Union's Version of the Operation of the Movie Hiring Referral System

1. Wayne Shatkoff

Wayne Shatkoff testified and acknowledged that since his election in 2000, he has served as the Union's president and principal officer whose duties have included the negotiation, oversight, and administration of collective-bargaining agreements for the movie industry.

Shatkoff stated that in late 2004, he decided to turn the handling of the movie contracts over to Puniak. Shatkoff related that his decision was predicated on a very upsetting series of disputes involving Kraus—then serving as the transportation captain—and the transportation coordinator, Ted Robinson (now deceased), for the movie "10th & Wolf" for which he negotiated a contract for the Union.

According to Shatkoff, Robinson had instructed him to have a number of drivers report for work on the movie. On the appointed day, the workers showed up, but Robinson said they had not been called because there was no work for them that day. Shatkoff said he insisted on show-up time for the drivers and a dispute arose over this issue.

Shatkoff said that two other issues arose involving Kraus. On one occasion, a female driver was scheduled to work the movie but Kraus took it upon himself to call another female ahead of her. This incident resulted in the filing of a grievance by the Union to get the first woman paid as she was entitled under the basic rule that workers should not be called for work out of order.

On another occasion, Shatkoff said that Kraus chose to send a driver on an extra-duty run to New York City ahead of other drivers already employed. Shatkoff said this posed a violation of the movie industry rule (practice) that the drivers first on the production had the pick of job assignments for extra work like the New York run, which presented an opportunity for a driver to work longer hours. Shatkoff acknowledged that the driver in question was Kondos.

Shatkoff stated that he brought the matter up with Kraus by phone and told him that he (Kraus) had favored his brother-in-law over other drivers with more seniority on the movie, and that premium assignments had to be given by seniority.

Shatkoff denied that the subject of Kondos' firing or removal from the project ever came up in these discussions, and that he did not tell Kraus that he (Shatkoff) would assume responsibility for hiring drivers for this movie and that Kraus was not to interfere with him regarding hiring. Shatkoff noted that Kraus told him that he would like to have the choice of drivers working with him on movies. Shatkoff said that he merely admonished Kraus, telling him that he had broken the seniority rule and that driver assignments had to be made on the basis of seniority.

Shatkoff said he was familiar with the movie "Graduation" but did not handle the contract negotiations or the hiring for this project. Shatkoff denied ever receiving a telephone call from Kondos expressing his interest in working on "Graduation." According to Shatkoff, if he had received such a request, he would have referred the matter to Puniak because after "10th & Wolf," he had no involvement with movie projects. Shatkoff also denied ever telling Kondos that he was rotating drivers for assignments to the movies.

Shatkoff also denied ever seeing—before the hearing—the letters (GC Exhs. 7 and 8) Kraus, Roche, and Kondos claimed to have sent to Hoffa. In likewise, Shatkoff stated that he never—before the hearing—had seen Roche’s letters (GC Exhs. 13 and 14) to Reed of the International. While conceding that the letter from Reed (GC Exh. 9) indicates he was copied, Shatkoff said he never received a copy. Shatkoff admitted that Ron Schwab, whose name appears in this letter, conversed with him, but about a subject unrelated to any issues concerning movie referrals.

Shatkoff, however, admitted that in August 2005, he did receive a call from Tom Schatz, an official in the movie division of the International in Baltimore, Maryland. According to Shatkoff, Schatz told him that he (Schatz) had received a complaint and did he (Shatkoff) know “these people.”³¹ According to Shatkoff, Schatz asked what was the situation, what was going on with regard to the movies in Pittsburgh. According to Shatkoff, he told Schatz that he had not received any complaints about the movies and, besides, he no longer handled the movies, which were then being handled by Puniak.

Shatkoff volunteered that in his view, there was a difference between a complaint and a charge against the Union, the former being merely “something someone did not like” and the latter involving a violation of the union constitution or bylaws. According to Shatkoff, he viewed Schatz’ inquiry to be in the nature of a complaint, not a charge against the Union in which case the local would have handled it. However, since the matter was filed with the International, Shatkoff believed the International would deal with it.

Shatkoff admitted that Schatz and Schwab both called him, with Schatz telling him that Kraus and Roche were complaining; according to Shatkoff, they had not mentioned Kondos. Also, Shatkoff insisted that neither man told him that a letter (about the matter) had been sent to him.

Shatkoff acknowledged that he was aware that Roche filed a charge regarding the movie industry, but that it was a “complaint.” Shatkoff stated that he has never seen any “charges” filed by Roche; for if one had been filed, it would have been brought to his attention. Shatkoff noted that Schatz did not tell him that he was required to follow up on the complaint and, in fact, he never heard from Schatz again to ask for any action on his part.

Shatkoff acknowledged, however, that he was aware that about a month or two after the Schatz conversation, Roche had filed a charge against the Union with the Board, but that it was dropped. Shatkoff stated he was never contacted by the Board regarding Roche’s charge and not really informed about the details of the charge.

At the hearing, Shatkoff was shown the contracts between the Union and MOP and Smart People, but said that this was the first time he had seen them, as he had not handled movie contracts since 2004.

According to Shatkoff, he and Puniak would discuss contract clauses but not in depth; and he never reviewed the final contracts, including those for MOP and Smart People. Shatkoff stated that this was Puniak’s responsibility and he left the final movie contracts to him. Shatkoff said that after “10th & Wolf,” he never really looked in depth at a movie contract because he felt

³¹ Shatkoff did not identify who “these people” were. I infer that Schatz in all likelihood identified the complainants to be Kraus, Roche, and Kondos.

the matter was in the capable hands of Puniak who, in fact, did discuss the contract terms of MOP with him.³²

Shatkoff stated that he never received complaints about the Union's referral system for the movies; that the only complaint the Union ever received came from "these three." (Tr. 283.)

Shatkoff denied ever instructing or demanding that the movie producers, including MOP or any other movie, not utilize Kraus, Roche, or Kondos; and at no time did he interfere with their getting hired by any employer.³³

2. Robert Puniak

Puniak testified³⁴ that he was elected to the position of business agent for the Union and assumed office on January 1, 2003; the business agent negotiates contracts and handles disputes and other issues that may arise between employers and the represented unit of employees.

Puniak stated that before his election, he was a truckdriver for a local grocery chain and had never held a formal position with the Union.

Puniak testified that as business agent he reports to Wayne Shatkoff. Sometime in 2005, Shatkoff assigned him to handle the Union's movie contracts; since 2005, Puniak said that he has been the Union's sole contact with the movie producers. According to Puniak, he has had many conversations with Shatkoff about the movie business and how the union referral process works.

Turning to the Union's contract with MOP, Puniak said that he negotiated the contract, and as such it was a typical contract with a movie producer. Puniak noted that while Shatkoff attended the meetings where the contract was negotiated, he had no input whatever in the negotiations. Puniak stated that he also negotiated the Smart People contract but since the contract was with the MOP producer, there was little or nothing to negotiate; and as such the contract was identical to the MOP contract. Puniak also noted that the production company requested of the Union that the transportation crew working MOP be retained for Smart People.

Puniak related the hiring/referral process he utilized with regard to the movie contracts once he took over this function. According to Puniak, the movie transportation coordinator contacts the Union and informs it of its driver requirements. According to Puniak, the coordinator may request or recommend certain specific persons he desires to work on the project; these persons—key people—comprise a portion of the number of drivers needed.

³² Shatkoff said that for example, par. b(3), p. 3 of the MOP contract was discussed by Puniak and him and that it was taken from a contract provided by another local that deals exclusively with movie projects. Shatkoff said this paragraph was included in all subsequent Local 249 movie contracts.

³³ Shatkoff testified that he never received a call from Kondos on or about August 26 or 28, in which Kondos expressed any interest in working on MOP. In fact, Shatkoff insisted that he had never heard from Kondos saying that he was interested in working on MOP.

³⁴ On August 27, 2007, Puniak was called by the General Counsel who, upon his motion, was allowed to examine him as an adverse witness under Rule 611(c) of the Federal Rules of Civil Procedure.

Puniak stated that around January 2005 when he first became involved with the movies, he worked with and relied on the superior experience and knowledge of the transportation coordinators such as Marc Scott, and even Kraus who had worked as a coordinator. Puniak noted that the coordinators, being more familiar with the work force, would tell him whom they wanted on the projects. Puniak emphatically denied that he (on behalf of the Union) had the right to deny the coordinator's request for specific persons. Puniak insisted that the Union did not maintain at the time—2005—a sign-up list for the members desiring to work on the movies, but that he worked off a list of employees who had worked previously on other projects to select employees for movie jobs.

Puniak stated that while he could recommend drivers, he could not force a movie producer to hire anyone he suggests.³⁵

Puniak conceded that prior to assuming the position of business agent in 2005 he had no official role within the Union's hierarchy and, in fact, had never even attended a union meeting. He essentially knew nothing about the movie business, the Union's association with it, or any of the drivers who worked on these projects. So he depended on the coordinators like Scott and even Kraus who would tell him which driver was "good" or "bad." Puniak admitted that he, having consulted the prior contract list of drivers, knew that Roche's name had appeared as a movie driver.

Puniak stated that he employed no criteria in selecting drivers off the lists and could not care less who worked on the movies; his main concerns were making sure the Union received dues contributions from all the drivers and encouraging the movie producers to come back to Pittsburgh to film.

Puniak stated he was familiar with the movie "Graduation"—his first movie project that was shot in 2005. Marc Scott was the transportation coordinator. Puniak stated he knew Scott was very familiar with Kraus, Roche, and Kondos and believed that they had contacted Scott about working this movie. Puniak stated that he and Scott worked together to "crew up" "Graduation," and Kondos and Roche were on the list of drivers from which he worked to fill slots. According to Puniak, Scott, while aware of Roche and Kondos' availability, did not select them. Puniak stated that he did nothing to interfere with Scott's decision, but by the same token there was nothing he could do about it.

As for Kraus, Puniak stated that he knew he worked on "Graduation" as the production captain, but Scott had not requested him. Puniak noted that the transportation captain on "Graduation" was Rich Mareno, who was selected by Scott, whom Puniak described as the decision maker on "Graduation."

Puniak testified that he was aware that Kraus, Kondos, and Roche had complained to various union officials about the Union's movie referral practices in 2005; he knew "something" was going on and later became aware of a Roche letter to James Marshall. However, Puniak claimed that he only became aware of the Hoffa letter about a week before testifying at the hearing (on August 27, 2007).

³⁵ Puniak cited as an example Kraus, acting as a coordinator on a project, refused the referral of a member, John (Sonny) Cunic, who was unemployed at the time but was viewed by Kraus as a problematic worker on the movie projects. Puniak noted that he, himself, also was not entirely sanguine about Cunic because later he was informed by MOP's transportation coordinator, Scott, that he was not a desirable driver for the movies.

Puniak stated that at times he works closely with Shatkoff, but not on a daily basis. Specifically, Puniak testified that Shatkoff did not inform him that Kraus, Roche, and Kondos had complained to Hoffa, a matter he believed would normally be handled through the Union's executive board with which, as business agent, he has no direct involvement. Puniak acknowledged that he knew the three had corresponded with the Union's secretary-treasurer, Cowan, but was not sure what the matter was about.

Puniak stated that he was also not aware that Roche had lodged a written complaint with Charles Byrnes whom he knew as president of another local³⁶ and was involved with the International; nor was he aware that Roche had filed a charge with the Board alleging discriminatory treatment by the Union in the referral process. Puniak said this type of matter would not come to his attention as business agent.

Puniak admitted that he was familiar and involved with the MOP movie project which he said began shooting in September 2006, although the "ramp up" commenced sometime in August 2006. He explained that he and Shatkoff met with representatives of the producers—Lee Ann Stonebreaker and Vicki Rock—at their offices in a Pittsburgh hotel to discuss the contract for the Union's drivers. According to Puniak, he attended a second meeting with the producers without Shatkoff and that by the time of the second meeting, Marc Scott had been designated transportation coordinator for the movie.

Puniak again asserted that Scott was familiar with Kraus, Roche, and Kondos and had every right to hire them, and that he (Puniak) could do nothing about this. Puniak stated that he "absolutely" did not send a list of names to Scott for referral to the project. Puniak said that he knew that neither of the three worked on MOP, although at the time he believed that Kraus was working on the ramp up of another film project—Goose Bumps, "The Haunting Hour"—and was not available for MOP.³⁷ Puniak said he later learned from Scott that Kraus and Roche had requested to be considered for MOP; Puniak said he was not sure whether Kondos had made a similar request, but acknowledged the three usually worked together on every movie.

According to Puniak, Scott told him that he (Scott) was in touch with Roche and that although Kraus had telephoned, he (Scott) did not return the call.

Puniak conceded that he knew that Kraus had sent a letter to the Union indicating his interest in working on MOP but around this time, Kraus had informed him that he (Kraus) had been hired as the transportation coordinator for the Goose Bumps project. Puniak said that he told Kraus such a move was not advisable, quitting Goose Bumps in that way would harm his reputation.

³⁶ The Respondent's counsel stipulated on the record that Charles Byrnes is secretary-treasurer of Teamsters Joint Council 40, sometimes referred to as District Council 40, and also serves as president and principal officer of Teamsters Local 926 and served as the International representative under appointment of the International Brotherhood of Teamsters (Tr. 43-44).

³⁷ Parenthetically, Puniak stated that in August 2006, he had no knowledge that either Kraus, Roche, or Kondos were delinquent in the payment of their union dues (fees or other assessments). There is no dispute or issue as to the members in good standing status of either of the three Charging Parties.

Puniak admitted that before the final determination of the makeup of the driver crew for MOP had been made, he received a letter (by mail or fax) from Kraus, Roche, and Kondos indicating their interest in working this project.³⁸

5 Puniak stated he had no reason not to refer the three for MOP, and that Scott knew they were available because of his list of available drivers. Regarding the drivers actually hired on a movie project, including MOP, Puniak claimed not to know who they were until the transportation captain or the transportation coordinator sends the Union a list of the selected crew, at which time the Union's clerical secretary checks to ensure all drivers are current with
10 their dues. Before receipt of the crew list for MOP, Puniak insisted that he did not know who actually had been hired.

Puniak identified the list of drivers—the drivers call sheet—for MOP³⁹ that was faxed to the Union by the producer. Puniak noted that aside from Scott, and Denny Braun,⁴⁰ who was
15 appointed as set captain by Scott, he did not even know most of the persons selected as drivers and did not even know who selected them. According to Puniak, some of the selected drivers surprisingly were not even members of Local 249. However, Puniak testified that in point of fact, "he could care less" about what persons were on the list, that if the coordinator who knows the drivers believes they are good workers, what "benefit" was there for him. (Tr. 62-63.)⁴¹ In
20 that regard, Puniak stated the 20 or so drivers on the list were not selected by him based on any prior discussions with Scott, Braun, or Tim McLaughlin (a selected driver).⁴² Puniak, however, acknowledged he had discussed some of the selected drivers with Scott.

According to Puniak, when Scott or other transportation coordinators call to inform him of
25 the crew that had been selected, this is more in the nature of a courtesy call because the selections have already been made by the coordinator. In the case of MOP, Puniak stated that Scott did not call to obtain his approval of the selectees because it was understood that the Union cannot tell the employer *whom* to hire. Puniak stated that the contract language (regarding the exclusive use of Local 249 members on the project) "was never ever enforced,"
30 and even ventured to say that Kraus and everyone else knew this. (Tr. 65.)

Puniak stated that he generally announced an upcoming movie project at the Union's general membership meetings. Persons interested in working on the movie would express to him their interest and he, in turn, would "lead" them to the coordinator so that they could contact
35 him directly. Puniak insisted that he never received written applications from anyone who expressed an interest in working on a movie project. Puniak pointedly stated that he had never participated in a conversation with Roche or Kondos in his entire life.⁴³

³⁸ Puniak conceded that with most movie projects, there are additional driver positions to be
40 filled over and above the positions the coordinator requests as his key people. This was true of MOP as well as Smart People.

³⁹ MOP's driver call sheet is contained in GC Exh. 5.

⁴⁰ Puniak believed Braun faxed the list to the Union.

⁴¹ When I questioned Puniak on this statement, he testified that his (main) concern was that
45 all the driver jobs for MOP and Smart People were given to Local 249 members so that he could collect the applicable union dues. (Tr. 82.)

⁴² Puniak did not elaborate on McLaughlin's role in the selection of the MOP crew.

⁴³ In response to my question, Puniak stated that neither Roche nor Kondos contacted him
50 by phone regarding working on MOP or Smart People, only by letter. Puniak stated that in his mind, Roche and Kondos knew Scott very well and would have contacted him on their own. (Tr. 85.) He did not make any effort to put them in touch with Scott.

Puniak admitted that from the time he assumed responsibility for the movie work, and even up to MOP, the Union's hiring process was very informal, almost haphazard and "catch as catch can." On balance, Puniak stated that his referral system entailed referring interested persons to the movie's transportation coordinator, Scott in the case of MOP, and these persons would have to make their own case with the coordinator to obtain employment. Puniak said that he did not have further involvement beyond this and all lists of selected employees were put together by the coordinator who had the authority in his view to accept or reject applicants for the project.

Regarding the employees selected as drivers for Smart People, Puniak identified a driver timesheet for that movie,⁴⁴ and stated that with the exception of two drivers, the MOP driver crew was carried over to Smart People. Puniak recalled receiving a letter from Scott requesting that the entire MOP crew be retained for work on Smart People because this movie was also being produced by the MOP production company; Puniak said this request was granted by the Union.

On August 28, 2007, Puniak was called by the Respondent in its case-in-chief.

Reiterating his earlier testimony, Puniak stated that he was first assigned to represent the Union in the movie industry in late 2004; since early 2005, he alone represented the Union in this industry.

Puniak stated that when he was assigned this responsibility, he had no independent understanding of the industry and received no training or preparation from the Union regarding contract negotiations with the movie producers. Moreover, he knew none of the Local 249 members who normally worked on movie projects. As such, he undertook the movie assignment "cold."

Puniak testified that when he took over the movie business, there was no formal system in place for referrals. Referring to his prior testimony, Puniak emphasized the "lists" he utilized were actually based on a file of movies and the drivers who worked them that Shatkoff had maintained when he handled the movies in 2000. According to Puniak, those "files" were basically driver call sheets from prior movies which he used to determine who had worked the movies and the nature of the job they performed; they were not a work list or referral list in the formal sense for future movie projects coming to Pittsburgh.

Puniak stated that the first movie he worked on was "10th & Wolf" but he did not negotiate the contract for this project and, furthermore, the transportation crew had already been designated. The first movie for which he was primarily responsible was "Graduation," which was filmed in August 2005; Marc Scott was the coordinator and the transportation captain was Rich Mareno.

According to Puniak, Scott, whom he first met on "Graduation," follows a certain routine in crewing up his driver cadre—he names his key people and then consults with the Union about the availability of drivers. Puniak noted that Scott had designated Rich Mareno transportation captain; Tom Weifenbach, the honey wagon driver; and Kraus and Byron Roland, as his key people on "Graduation."

⁴⁴ See GC Exh. 6.

Puniak identified the driver list for “Graduation”⁴⁵ and stated that Scott had the right to name his key people for the project, and that for his part he relied on Mareno and Scott to fill out the list, as they were more familiar with the candidates. Puniak testified that when he took over the movie assignment he had not heard of the terms “exclusive” or “nonexclusive” in the context of the referrals for movie jobs. As far as he was concerned, Puniak felt that the employer—
 5 through the transportation coordinator—placed all of the workers on the respective movies. According to Puniak, this was the case with respect to “Graduation,” and another film project he worked on, “Smith” pilot, which began shooting in early March 2006.⁴⁶

Regarding the “Smith” project, Puniak believed this contract for the first time included the contract language in (b)(3) (of the “Employment” section), which required the sole use of Local 249 members, the Union’s choice of the transportation captain and co-captain, and the referral to the producer of drivers from the Union on a nondiscriminatory basis and without regard to union membership. Puniak stated that although the insertion of this clause emanated from an
 15 earlier hiring problem the Union had experienced with a movie producer,⁴⁷ he believed the clause was there only to secure union dues and initiation fees for drivers on the projects who were not members. Puniak averred that as far as he was concerned, the actual practice of the Union for movie jobs was not exclusively to refer all the persons to be hired. Puniak stated that if prior to his involvement, the Union was indeed referring drivers, he was not aware of this
 20 practice.

Puniak noted that the contract language of paragraph (b)(3) was incorporated in the contracts for MOP and Smart People and in subsequent movie contracts he has negotiated. He noted that the only exception was the Goose Bumps contract,⁴⁸ which he described as
 25 concessionary regarding wage rates due to the low budget of the project and because the producers promised to make possibly five additional film projects for Pittsburgh in the future.

Puniak insisted that Local 249 was not his exclusive source of drivers for MOP or for “Smith” pilot. He noted that Lauren Donnelly, Dan Dickman, Ron Miller, Burt Hippert, and
 30 Chuck Long, all employed on MOP, were not members of the Union.

⁴⁵ See R. Exh. 5, the drivers’ timesheet for “Graduation.” Puniak testified that he knew some of the men and was familiar with their experience and abilities. Some of the men were known to Scott and thus had appeared on other driver timesheets for other projects.

⁴⁶ Puniak identified R. Exh. 6 as the drivers’ call/timesheet for “Smith.” Notably, Kraus was listed as the coordinator for Smith. Puniak said that at the time of the “Smith” ramp-up, the needs of his son—injured in a very serious auto accident—required him to devote a substantial amount of time at the hospital. Puniak said that Kraus, with his approval, handled the contract for “Smith.”

⁴⁷ Puniak explained that the clause emanated from work-related issues the Union had with the producer of an earlier film, “10th & Wolf.” Puniak explained that the producer of “10th & Wolf” (Puniak’s first film assignment) in 2005 had put his girlfriend on the project as a driver, causing the members to complain that the producer was bringing in nonunion persons to perform Teamster jobs. Grievances were filed by the Union over this issue. The matter was
 45 settled by the parties by the removal of the no-strike/no-lockout clause for people who only worked for a week (or so), and the insertion of (b)(3) which provided for union security in the contract. According to Puniak, this clause was to be included in all future contracts.

⁴⁸ The Goose Bumps driver call sheet (R. Exh. 4) is entitled “Don’t Think About It.” This project was in place as of November 19, 2006. Kraus was the transportation coordinator and Roche and Kondos are listed as drivers. Puniak stated that Dan O’Holt, the honey wagon
 50 driver, and Walter Myal, a van driver, were not members of Local 249.

Turning to the complaints of Kraus, Roche, and Kondos, Puniak again insisted that prior to the hearing he had “absolutely not” ever seen the letter addressed to Hoffa; in likewise, he had “absolutely not” seen Roche’s letters to the Teamsters International in California. (Tr. 323–324.) Puniak stated that he also was not aware of Roche’s charge filed with the Board in August 2005; however, he volunteered that a charge of this type would not be directed to him.⁴⁹

Puniak stated that he had heard of the complaints of the three when he was contacted by Marshall, president of Joint Council 40, about some time after the completion of “Graduation.” According to Puniak, Marshall told him that he had received a letter from Roche complaining that Shatkoff was interfering with his getting hired on “Graduation.” Marshall also said that Roche was always making complaints about Shatkoff. Puniak said that he told Marshall that Scott, the coordinator for “Graduation,” was very familiar with Roche and if he wanted Roche, he could have hired him; that he (Puniak) could not force Scott to hire workers. According to Puniak, Marshall said that if this were the case, the Teamsters could do nothing about Roche’s complaint and would so inform Roche.

Puniak insisted that neither Kraus, Roche, nor Kondos ever registered a complaint with him against Shatkoff with respect to handling of the movie jobs. Puniak conceded, however, that any complaint regarding the referrals would (as an internal union matter) have been lodged with Jim Cowan.

Puniak asserted that he had no hostility to either of the three and only formally met the three on the set of the movie “Bridge to Nowhere” in 2007, where Kraus, as the coordinator, made a point of calling Kondos and Roche on the walkie-talkie to come up for a meet and greet.⁵⁰ (Tr. 329.) Puniak specifically denied that their filing complaints with the International in 2005 and Roche’s complaint with the Board did not bring them into disfavor with Local 249. Puniak said that in point of fact, he had tried on numerous occasions to give the three favorable recommendations to Scott because he believed there was animosity between Marc Scott and his key man, Denny Braun, and the three.

Along these lines, Puniak said during the crew-up phase, he spoke to Scott about Kraus, Roche, and Kondos being hired for MOP because the three had sent him a letter expressing their interest in working on this film.⁵¹ According to Puniak, he attended a meeting with the MOP producers (Stonebreaker and Rock) to go over the contract. Scott did not attend this meeting but while in the lobby of the hotel, Puniak spoke to Scott who was accompanied by his key man, Denny Braun, and suggested that he hire the three because they were indeed experienced. According to Puniak, Scott said absolutely no. Puniak said that he told Scott that the three men believed they were not being hired because of the Union (the Teamsters) and while he (Puniak) could not force Scott to take them, he would like them to be considered

⁴⁹ Puniak recalled that he heard that this charge had been withdrawn by Roche.

⁵⁰ Puniak initially said that he met Roche and Kondos for the first time around March–April 2007 at the union attorney’s office. He said that he first met Kraus around the time of the filming of “10th & Wolf” and took it upon himself to introduce himself to Kraus whom, along with Scott, he regarded as the “main movie guys” in the Pittsburgh area.

⁵¹ Puniak denied that either man contacted him by telephone or in person about working on MOP. He steadfastly denied that Roche had left numerous voice mails around the end of August 2006, about working on MOP; that if he had, he would have returned his calls.

because of their work history. According to Puniak, Scott again said absolutely not, they need to be hit in their pocketbooks, and repeated the phrase.⁵²

Puniak said that after this conversation, he spoke to Kraus, Roche, and Kondos at the union hall after the general meeting and told them that there was definitely some sort of conflict between them and Scott since he refused to hire them. According to Puniak, Kraus, Roche, and Kondos responded, saying that this was a bunch of bull. However, Puniak said that he happened to mention that Denny Braun was at the meeting, and that he (Puniak) did not know him or anything about him. Puniak said that he asked the three why Scott and Braun were so tight. According to Puniak, Kraus and another member standing among the group—Rick Stotler—said, “[T]hem two suck each other’s cock.” Puniak said he took that as a clue that there was some animosity between Scott and Kraus.⁵³

Puniak insisted that he had done nothing to interfere with the three men being employed in the movie business, and that he had never been instructed by anyone, including Shatkoff, to interfere with their ability to be hired in film projects.

However, according to Puniak, he told Kraus on several occasions—but after MOP and Smart People⁵⁴—that Scott, the transportation coordinator on those projects, did not want to work with him (Kraus). Puniak said that in fact he had more than three conversations with Scott in which Scott said he did not want to employ the three men.⁵⁵ Puniak believed that it was his belief that Scott desired to use “new” people on the movie projects which would account for his hiring for MOP inexperienced drivers such as Lauren Donnelly, Burt Hippert, Larry Parker, and Chuck Long, all first-time drivers.⁵⁶

According to Puniak, he believed that Scott, as the coordinator for MOP and Smart People, had the authority (power) to hire the people he wanted and that the Union could not force him to take a driver but that the Union was free to refer drivers. Accordingly, he would tell interested drivers to contact Scott and Scott would make the decision. Puniak, in short, insisted this was the essence of his referral “system” for MOP and Smart People in the 2006 time frame. (Tr. 369-370.) However, he conceded that on October 27, 2006, Scott requested that the Union allow the MOP drivers to remain employed for Smart People. (R. Exh. 7.)

⁵² Puniak testified that he did not know what Scott meant by his response but speculated that Scott believed Kraus was competing with him for the movie coordinator jobs and that Kraus had to suffer financially.

⁵³ On cross-examination by the General Counsel, Puniak stated that he also told Kraus that Scott said that he did not want him on his (Scott’s) projects.

⁵⁴ Puniak said that he first told Kraus of Scott’s position at the Respondent’s attorney’s office shortly after the instant charges were filed by Kraus; later at a union meeting; and at a restaurant meeting. He could not recall the dates of these latter two meetings.

⁵⁵ However, when pressed by the General Counsel who asked him about Scott’s claimed antipathy toward Kraus, Kondos, and Roche, Puniak conceded that his conversations with Scott did not take place in 2006, and were not specifically made in the context of the MOP or Smart People projects. He believed the conversations in which he claimed he recommended the three to Scott occurred in calendar 2007 and in reference to a movie—“Kill Point”—then being filmed. Puniak ultimately confessed that he never said anything to Kraus about whether he was going to be referred to MOP.

⁵⁶ Puniak admitted that, in addition to being competent drivers, movie drivers had to be reliable and punctual because time is money in the business, and had to be able to get along with other people.

As noted earlier herein, the hearing was resumed on October 30, 2007. At that time, the Respondent requested to be allowed to reopen its case-in-chief to allow additional testimony from Puniak. I granted this request over the objection of the General Counsel.

Puniak testified that during the time the hearing was adjourned, he had examined his prior testimony and that he wanted to correct certain points covered in his prior testimony in which he felt he misdirected his testimony "to look good on our—the Union's—behalf." (Tr. 394.)

According to Puniak, at least during the time he was responsible for the movie hiring process, the transportation captain was designated by the Union for any movie production, and Shatkoff usually told him whom to select; the transportation captain acted in the role of a steward. On the other hand, the set captain is usually selected by the transportation coordinator and Scott specifically brought in his own set captain for his projects.

Puniak proceeded to explain the roles he and others associated with the Union played on various movies for which he was responsible. With respect to the movie "Graduation," Puniak stated that Shatkoff told him to put Rich Mareno on as transportation captain.⁵⁷ Regarding the television pilot, "Smith," he believed that he and Kraus worked out the staffing for this project. Regarding MOP and Smart People, Shatkoff designated Mareno for the former, and Timmy McLaughlin for the latter. For Goose Bumps, Puniak stated that he and Kraus, as coordinator, worked out the driver complement, and union member Tommy McCue was designated as transportation captain. With respect to "Kill Point" and "Bridge to Nowhere" (both 2007 productions), Puniak said that either Mareno or McLaughlin were designated (by Shatkoff) as transportation captain for the former; and Kraus and he working together designated McCue for the latter.

Directing himself to his prior testimony (Tr. 39) in which he answered no ("absolutely not") to a question whether Scott had asked him to refer Kraus as the transportation captain for "Graduation," Puniak said this answer was true but that he wanted to expand on his response as he did not give the "full answer."

Puniak stated that when "Graduation" was being shot, Kraus, then employed as a driver, said to him that Scott had requested him to serve as captain but that either he or Shatkoff would not allow it. Puniak said that he told Kraus this was not true but that the two should talk to Scott immediately ("right now"). So, according to Puniak, he and Kraus met with Scott who denied the accusation and said that he had indeed not requested Kraus for captain.

Puniak directed himself to his prior testimony (Tr. 70–75) in which he stated basically that he did not know how a driver, Ron Miller, was hired for MOP or how Miller got in contact with Scott, Puniak said this was not an accurate answer. According to Puniak, he was instructed by Shatkoff to do Miller a favor, to recommend him to Scott. Puniak said that he later contacted Scott and told him that he (Puniak) wanted Miller to be hired on MOP.

Puniak also stated that when he previously testified (Tr. 308) that the Union did not exclusively refer all persons for the movie driver jobs, his answer was not accurate. Rather,

⁵⁷ Puniak previously testified that the transportation coordinator for "Graduation" had selected Mareno. Puniak corrected himself, stating that the Union (Shatkoff) directed this move.

Puniak said that in reality, the Union did refer drivers for "Graduation," "Smith" project, and MOP. He elaborated as to each movie's hiring scenario.

Regarding "Graduation," Puniak said the producer (coordinator) did not select all of the drivers, and the Union called Scott and informed him what members were available.

As to the "Smith" pilot, Puniak said that because the movie was being shot during the time his son was in the auto accident, he cannot say who in the Union was involved in the referral of a driver, but that the producer did not place all of the drivers.

With respect to MOP, Puniak said that Scott placed some of the drivers—the key drivers—but he (Puniak) called Scott and told him of the people who were available for the rest of the driver slots. Puniak added that while Scott in his view could decline to hire his referrals, most of the time he did not. Puniak stated that Shatkoff and he selected the drivers who were employed on MOP, and that Shatkoff instructed him to refer certain persons for this movie.

Puniak stated that while he personally did nothing to interfere with the movie employment opportunities for Kraus, Roche, and Kondos, his testimony that he had never been instructed by anyone, including Shatkoff, to interfere with them was not accurate.

Puniak stated that Shatkoff told him on numerous occasions as far back as 2004 and 2005, that he did not want Kraus employed on any of the film productions.⁵⁸ Puniak explained that during the filming of "10th & Wolf," Shatkoff told him that he (Shatkoff) had spoken with Kraus about the need for more members to be trained to be captains on the movies because Kraus was at the time the only person with this experience; should he get sick, there was no one else available. According to Puniak, Shatkoff said this did not go over well with Kraus and their relationship began to sour, "to go south," and that Shatkoff formed a low regard for Kraus. Puniak stated that he never, however, told Scott about Shatkoff's antipathy to Kraus.

Puniak stated the bad relationship with Kraus and Shatkoff notwithstanding, and Shatkoff's oft repeated instruction not to refer Kraus, he (Puniak) operated the movie referral system by sending prospective drivers to Scott who was free to reject them but never did; and that in this selection process, he was acting under the instruction of Shatkoff to name certain people for the project in question.⁵⁹

D. The Alleged Discriminatees' Version of their Treatment by the Union

1. Donald Kraus

Donald Kraus testified that he has been a member of Local 249 since 1964 and at all times has been a member in good standing and, in particular, was in good standing in August 2006. Kraus testified further that he has never held or even run for union office.

⁵⁸ Puniak readily acknowledged that he knew that Kraus, Roche, and Kondos were usually employed on the same projects, and that Kondos was Kraus' brother-in-law. (Actually, Kondos was affianced to Kraus' sister.) Puniak did not divulge what, if any, reasons were given by Shatkoff for these instructions.

⁵⁹ Puniak said of the drivers sent to work on MOP, he sent Hippert, Terence (Skip) Sullivan, Victor Najanick, and Donnell; Shatkoff selected Miller. Scott filled some slots with his "key" people. Basically, according to Puniak, he and Shatkoff collaborated on the selections for MOP but did not include Kraus, Roche, and Kondos.

Kraus stated that he has been involved in the movie business in Pittsburgh since around 1980–1981 and has worked on about 3 dozen films over that period and, since 2001, about 10–12 films.⁶⁰ Kraus said that he has served as a union transportation captain and steward and driver, as well as a coordinator hired by the producers. Kraus said that the last movie he worked on was Goose Bumps—“The Haunting Hour,” a 2006 project.

According to Kraus, employment on a film project may be as little as a couple of weeks or up to 3–4 months, depending on the production. Kraus opined that one’s experience is very important in the movie business. First, a driver operates different types of vehicles—vans, tractor-trailers, and automobiles; one also has to know how to conduct oneself on the set, when to be on the set, and when not to; one has to be willing to prepare the stars’ (actors and actresses) trailers to level them and even clean the toilets, which not many people want to do in his experience. Kraus stated that the transportation captain should be able to drive and operate all movie-related equipment.⁶¹ According to Kraus, from 2001 to the present, he has served as captain on a number of movies in Pittsburgh.

Kraus said the coordinator is hired by the movie producer.

Kraus said the coordinator position also requires substantial experience. The coordinator serves as the employer’s (producer’s) head of the transportation and among his responsibilities include administering the transportation budget, renting equipment, and interfacing with unions to reach a contract acceptable to the producers.

Kraus said that he was hired as a coordinator for the television pilot, “Smith,” in 2006; he could not recall the exact date but this project was in place prior to MOP. Kraus stated that he called the Union and dealt with Puniak regarding filling the driver slots for that movie and told Puniak that he needed 10–12 drivers.

According to Kraus, Puniak gave him a list of names of persons thought to be available for work. Kraus said that he was not at liberty to hire anyone who was not a member of Local 249, and insisted that he could not hire even a personal friend off the street because the contract with the Union stated that the Union was the only referral source for drivers. Kraus declared that in Pittsburgh he did not hire anyone without going through the Union and, in particular, getting Puniak’s approval. As far as he knew, the referral system in place was “if you need drivers, you call the Union.” (Tr. 96.)

Kraus stated that on occasion, a coordinator needs his “key” people on a shoot, and he, himself, as a coordinator has requested of Puniak to allow him to hire specific persons for a movie.⁶² After the key people are hired, Kraus says the coordinator does not concern himself with the referrals made by the Union, assuming they are competent drivers.

According to Kraus, his relationship with Shatkoff began to sour around 2004 in the context of the filming of the movie, “The War That Made America,” on which he served as the

⁶⁰ See R. Exh. 1, Kraus’ resume that he prepared on February 20, 2007, which lists some of his movie experiences.

⁶¹ Kraus said that he has driven “pretty much” every piece of equipment on a movie shoot except for the honey wagon and the production van, which he said require specialty training and often are subject to the dictates of the company that leases the vehicles to the project.

⁶² Kraus said as coordinator, he requested key people for both “Smith” and Goose Bumps.

transportation captain. Kraus related that Shatkoff had negotiated a contract with the producers in which there was no holiday pay for the drivers. Kraus said that about 2 weeks into the movie's production, Shatkoff faxed him a copy of the contract and once the drivers learned of the omission, they complained. Kraus said he informed Shatkoff that a provision for holiday pay should be included in all of the agreements. According to Kraus, Shatkoff acknowledged that holiday pay had not been included in the agreement, but that he (Kraus) should have told him to include it. Kraus stated that the two engaged in a heated argument with raised voices. Kraus said that he told Shatkoff that it was his job as the Union's representative to negotiate the contract, that the transportation captain does not involve himself in contract negotiations.

In around July–August 2005, Kraus said another movie, "10th & Wolf," was shot almost immediately after "The War That Made America"; he served as transportation captain on this project. Kraus related an incident on this set involving Kondos⁶³ which exacerbated his then-deteriorating relationship with Shatkoff.

According to Kraus, the coordinator on "10th & Wolf," Ted Robinson,⁶⁴ asked him (Kraus) to identify his key people to get the project started. Kraus said he chose Kondos, Roche, and two others as the key drivers. Kraus said that Robinson was supposed to inform Shatkoff of the selection and, in fact, Robinson told him that he had done so and that the four had been approved by Shatkoff.

As it happened, the project required a certain piece of equipment located in New York City. Kraus said that he consulted with Robinson, telling him Kondos, whom he thought had been approved, was a good and reliable driver who could retrieve the equipment; Robinson agreed, and Kondos made the run.

Kraus stated that he later learned that Robinson had misinformed him, that Shatkoff had not approved Kondos for "10th & Wolf," and had, in fact, instructed Robinson not to hire Kondos under any circumstances. In any event, after Kondos returned, Shatkoff, very irate, called him (Kraus) and in a loud voice⁶⁵ admonished him, declaring that he (Shatkoff) does the hiring in Pittsburgh and tells (the captain) whom to hire; and that when Kondos returned, to get rid of him. Kraus said that he told Shatkoff that Kondos had returned from New York but that if he wanted him fired, he should call Robinson and instruct him to do so, that Kondos had done nothing wrong.

Kraus stated he tried to calm Shatkoff down, advising that Kondos needed a job to support his three children. However, according to Kraus, Shatkoff insisted that he did the hiring and would tell him whom to hire, and then hung up the telephone.

Based on his experience with the movie "Graduation," Kraus said he came to realize that he had really angered Shatkoff and possibly would not be getting any additional movie work.

Kraus stated that Puniak informed him about the anticipated shoot of "Graduation" and there was an opening for a driver in the electrical or prop departments of the project.

⁶³ Kraus described Kondos as his future brother-in-law (the brother of his fiancée), and said that Shatkoff knew of his relationship because he had discussed the matter with him regarding hiring on another movie.

⁶⁴ Robinson is deceased.

⁶⁵ Kraus described Shatkoff's tone as hollering and screaming and ranting and raving.

Kraus said at the time he was out of work and told Puniak he needed a job, any job. Kraus said that Puniak eventually put him on the job as a driver, but he was 1 of the last 2 drivers of the 10–15 persons hired. Furthermore, according to Kraus, while the movie project ran for about 7 weeks, he worked only about 4 weeks and was among the first to be released when there was a layoff. Kraus said that at that time he and Shatkoff were not getting along very well because he had “bucked” Shatkoff over the Kondos matter and determined that his shortened tenure on “Graduation” was in retaliation for opposing Shatkoff. Kraus said he would have worked the entire 7 weeks of the shoot if given the opportunity because he needed the money.

Kraus said that he wrote various letters to the International and Local 249 in the context of the way he felt he was being treated during the filming of “Graduation” in 2005. Kraus acknowledged that the letters to Hoffa were not sent to Local 249 or its executive board because he believed they were all Shatkoff’s people.

Turning to 2006, Kraus said his last move had been “Smith,” the television pilot, and he was seeking work as of August 1, 2006. Kraus said that he had heard that MOP was coming to Pittsburgh around July 25 and thereupon took his résumé to the producers’ office to secure work. Kraus said he also called Puniak on August 25, and left a message saying he was available for MOP and to call him back; Kraus also said he called the union hall on August 25, leaving a similar message.⁶⁶ Kraus testified that he would have taken any kind of driver job on MOP, including the coordinator position.

Kraus testified he also faxed a letter to both Shatkoff and Puniak on about August 30 (though he forgot to put the date on the letter at the time⁶⁷), informing them that he was available and interested in working on MOP. Kraus said that neither Shatkoff nor Puniak responded to his letter or telephone calls.

Kraus emphasized that at the time—August 25 and 30—he had no other job prospects and was certainly available to take any job on MOP. Kraus also acknowledged that he did not directly contact Scott, whom he later learned was the coordinator, about being hired on as a transportation captain because this job is filled by the Union.⁶⁸ Furthermore, Kraus said that he decided not to contact Scott to avoid putting pressure on him, as he believed that Scott did not work well with Shatkoff.

Regarding Smart People, Kraus said he became aware of this project during the time he was engaged as coordinator on Goose Bumps.⁶⁹ Kraus said that he heard through the rumor

⁶⁶ Kraus identified copies of his telephone bill covering the period he claimed to have called Puniak and the Union. (GC Exh. 12.) Kraus said that he called Puniak at 9:14 a.m. on August 25. I have not set out the telephone numbers in question, but there is no dispute that the numbers in question are Puniak’s and the Union’s, respectively.

⁶⁷ Kraus identified GC Exh. 4 as the letter in question. Kraus handwrote “August 30 2006” next to his signature along with the fax number to which he sent it.

⁶⁸ Kraus stated that he learned later that there were two captain positions available on MOP. This was not necessarily unusual as on “10th & Wolf,” Shatkoff advised that the producers had authorized two captain slots for the movie. Shatkoff appointed one Joe Pokorny and him as captain and co-captain, respectively, on “10th & Wolf.” Kraus said that coordinators could indeed request specific persons to serve as captains but the selection is always left to the Union.

⁶⁹ Kraus parenthetically noted that as coordinator on Goose Bumps, he requested drivers for

Continued

mill that the MOP crew had been carried over to Smart People. Kraus testified if he had been hired for MOP, he believed that he, too, would have been retained for Smart People.

Regarding his relationship with Scott, Kraus stated that he has known him well for about 10 years. Kraus stated that he could not recall any conversation with Puniak at a union meeting in which he discussed not being referred to MOP or that Puniak told him that Scott did not want him on MOP or had refused to take him on.

Kraus said he could not recall Puniak's ever telling him that he needed to make his "peace" with Scott. Kraus allowed that Puniak did say "something" about Scott, but he (Kraus) believed the pressure, if there was any, was coming from Shatkoff who might have been pressuring Scott. Kraus opined that Shatkoff was causing problems with his referral for work, not Scott. In any case, Kraus decided he was not going to put pressure on Scott over the matter.

Kraus related that before "Graduation," he enjoyed a good relationship with Scott and worked with him on several movie projects. In fact, Kraus said that Scott wanted him to serve as captain on "Graduation," and spoke to Shatkoff about appointing him. However, Shatkoff would not agree to this and ultimately it was Puniak who referred him for a driver job on "Graduation."

Kraus declared that he was never referred to MOP or Smart People and, in fact, after he filed charges against the Union, he has not been called as a driver, let alone a captain, by the Union.

2. Kevin Roche

Kevin Roche testified that he has been a member of Local 249 since 1995 and has been a member in good standing over the entire period, but most particularly in August 2006 when the MOP production was ramping up. Roche said that he has never run for or held office with the Union.⁷⁰

Roche said that he has been involved with the movie industry in Pittsburgh since 1991 and, in fact, has had an ambition to learn the business so that he could ultimately produce films in his own right. In any case, Roche stated that he has worked mainly as a talent or van driver⁷¹ on about 24-27 film projects over the past 15 years or so. Since 2001, Roche said that he had

the movie from Local 249. In fact, he recalled that he specifically requested drivers Rick Stotler and Pat Richards for driver slots. But in the case of Richards, Puniak told him that he already had someone in mind, Mike Behr, whom Puniak referred ultimately and was hired. Kraus also recalled that he rejected one of Puniak's referrals for Goose Bumps, Sonny Cunic, who Kraus felt was not reliable on movie jobs. This took place around mid-October 2006.

⁷⁰ Roche acknowledged that around August 27, 2005, he requested to withdraw from Local 249 because he was paying dues but not getting work at the time. He has since rejoined the Union. (See R. Exh. 3.) The Respondent's counsel stipulated and agreed that Roche was and is a member in good standing during the material times herein. (Tr. 251.)

⁷¹ Roche defined a talent driver as one who transports individual movie stars and the van driver as one who drivers for a 15-passenger van that transports the movie ensemble or cast between the hotels and sets. Roche says that he did not possess a commercial driver's license (CDL) which he acknowledged would pay more, but he preferred to drive the stars and vans in order to better learn the movie business.

worked on about nine projects, including “The War That Made America,” West Wing,” and” “Bridge to Nowhere.” Roche said that he has never served as a captain or been employed as a coordinator.

Roche acknowledged and identified the letters he sent to the International criticizing Shatkoff around June–July 2005. Roche stated that his complaints about how Shatkoff administered the referrals to the movie projects began in the context of the filming of the movie, “10th & Wolf,” in 2003, at which time Shatkoff was taking a “hands on” role in assigning people to work the films.

Roche explained that during the filming of “10th & Wolf,” Shatkoff referred six drivers to the set based on his understanding of the commencement date of the production. However, when the men showed up on the appointed day, there was no work for them because the production schedule had been changed. According to Roche, Shatkoff had been operating on old (2–3 weeks) information about the production and evidently was not familiar enough with the movie business to know that the production schedules are fluid and changeable. The affected drivers called Kraus—the captain—and Robinson, the coordinator, who were caught unawares about their arrival. According to Roche, in the end, three of the drivers were given work; three others were sent home; and grievances were filed by Shatkoff for the other three so that they could at least get the 8-hour, show-up guarantee under the contract then in place.

Roche believed that Shatkoff completely mishandled the entire matter. He explained that in order to get the three men paid, Shatkoff, along with Puniak and five members of the Union⁷² drove to the movie set in a 15-passenger van and a ruckus ensued. According to Roche, Shatkoff and Puniak confronted Robinson in such a loud and boisterous manner about getting the men paid that the assistant director of the movie had to halt production of the film, which is very costly in the movie trade. According to Roche, the Union and the producers met right in the set parking lot, and engaged in so much screaming and shouting that the producers agreed to pay the men on the spot to settle the matter. However, even as Puniak attempted to calm Shatkoff down, telling him he had achieved his objective, Shatkoff, according to Roche, continued to badger the assistant director, saying that his men would not be treated that way.

Roche considered the matter a “mess” and that an incident like that, in the tight community of the movie producers, could prompt them not to make movies in Pittsburgh. Roche believed that although the matter could be viewed solely as a Teamsters problem, in reality other trades—grips and electricians—would be adversely affected if the producers decided not to film in Pittsburgh.

Roche stated that Shatkoff’s handling of the matter really disturbed him but it was on the occasion of the ramp-up for “Graduation,” and his failure to be hired on this movie, that he began to feel he was being “screwed.” (Tr. 211.)

Roche explained that because of his contacts in the business, he learned 2–3 weeks prior to the start-up of “Graduation” that it was coming to Pittsburgh. Accordingly, he contacted Puniak and informed him he was available for this project. According to Roche, Puniak asked him how well he got along with Rich Mareno who was slated to be the transportation captain. Roche testified at that point he knew he was in trouble regarding obtaining work on “Graduation”

⁷² Roche described the five as “sergeant-in-arms” types. I am not sure what he meant by this but, in the context of the encounter, Roche seemed to be saying these others were there as a show of force by the Union.

because Mareno was new and had never “captained” a shoot. Roche believed that Mareno was basically replacing the much more experienced Kraus whom he believed was being demoted in favor of a person who had, for the most part, only driven a camera truck on the movie projects. Roche said that he told Puniak about his concerns.

Roche stated he was not referred for “Graduation” and on August 4, 2005, he filed an unfair labor practice charge with the Board.⁷³ However, Roche said that he caught a lot of flak from about 12 fellow members about bringing the charge which they thought should be handled internally; that the Board charge was not a good thing for the Union. Accordingly, Roche said he withdrew the charge about 4 days later and decided to pursue the matter internally through the grievance procedure.

On about August 8, 2005, Roche said he called Puniak to obtain the proper forms and in the back and forth of conversation, Puniak (and possibly the secretary-treasurer, Cowan, on the line) tried to dissuade him from pursuing any charges, saying that his action was uncalled for and could be worked out (short of a charge). Roche said he restated his complaint about not getting a job on “Graduation” and wanted the executive board to hear the matter. Nonetheless, according to Roche, Puniak, in a “convoluted” way, asked him not to go forward; said that he was unqualified to work on “Graduation”—no explanation was given; and that had there been a third van on the project, he would have been hired.

Roche said that he followed up this conversation with a letter he mailed or faxed to the Union (Puniak and Shatkoff) that memorialized the discussion and also requested what he called the standardized grievances forms to clarify his position.⁷⁴

Roche said that on September 2, 2005, he sent a letter to Cowan with a copy of his complaint against Shatkoff’s conduct, including his treatment of fellow members seeking employment in the movie industry.⁷⁵ Roche said that Cowan, in his response (GC Exh. 18) on September 14, basically rejected his complaint because he (Roche) had not included the correct information or the specific charges as set out in his September 2 letter.

Roche testified that in response to this rejection, he consulted the Union’s bylaws and then rewrote the charges with a specific reference to applicable bylaw provisions and resubmitted it to Cowan.⁷⁶

⁷³ Roche identified GC Exh. 15 as a copy of his Board charge.

⁷⁴ Roche’s follow-up letter is contained in GC Exh. 16. Roche noted that the letter is undated but was drafted and sent about 1–3 days after the August 4 (a Monday) telephone conversation with Puniak. Roche also noted that a problem he had come up against lay in his obtaining from the Union the proper forms to pursue an internal complaint; the grievance forms were used to protest actions of employers. He needed the Union’s internal complaint forms to file charges against the Union.

⁷⁵ Roche’s entire complaint is contained in GC Exh. 17. Roche accused Shatkoff essentially of nepotism, patronage, and favoritism in the hiring process for the movies, including “Graduation” and “10th & Wolf,” along with a claim that Shatkoff extorted movie producers. Notably, he informed the Union that he selected Kraus to assist him in the presentation of evidence in support of his charges.

⁷⁶ Roche identified a copy of his revised complaint, GC Exh. 19. He noted that it was undated but that he submitted by letter, by mail, or fax to Cowan some days after receiving Cowan’s letter of September 14.

Roche stated that he ultimately came to the conclusion that any action against Shatkoff was going to be deemed procedurally improper or otherwise incorrect by the executive board or the union leadership. Moreover, Roche believed that even if he were granted a hearing before the Union's executive board, it was comprised of persons who had run for election on Shatkoff's ticket who would decide against him. Roche felt that he was losing "a war of attrition" with the Union and getting worn down by the effort. Then, too, Roche said he had found a job and needed to work.

Roche said that he decided to send a letter and a copy of his revised complaint to Joint Council 40 (but not to the Local 249 executive board or the International), addressed to secretary-treasurer, James Byrnes, around the end of September 2005. Roche could not recall whether Byrnes responded. However, Roche admitted that he never followed up on this letter to Byrnes.

Roche said that he had spoken to Kraus and Kondos about his dissatisfaction with Shatkoff's administration of the Union, specifically with respect to the movie referrals. Kraus said that he was going to write to Hoffa. Accordingly, Roche agreed to co-sign letters that Kraus sent to Hoffa in August 2005.⁷⁷ Roche said that the three received a response from Reed of the International's motion picture division on August 23, 2005 (GC Exh. 9). However, nothing came of the matter.

Roche said that around a year later—as of August 1, 2006—he was once more seeking work in the movies and some weeks before had heard that MOP was coming to Pittsburgh. Through his sources at the MOP production company, Groundswell Productions, Roche learned that the company was going to do back-to-back movies, which would have provided him a substantial period of employment, or so he reckoned. Roche stated that he also determined that Marc Scott, whom he knew very well, was going to be the coordinator for MOP.

Roche stated that at this time, with his troubles with the Union in mind, he decided to circumvent the Union and go directly to the producers for work. So, on July 30, 2006, he went to the MOP offices to submit his resume.⁷⁸ Roche thought that if the producers specifically asked for him, it would be more difficult for the Union to reject him. Roche said he hoped that he would be put on the producers' (key persons) list which would be sent on to the Union by Scott.

On about August 24 or 25, 2006, Roche testified that he spoke to Scott about a job, and Scott said that he would have to speak with Shatkoff and get straightened out with him if he was to work on MOP.⁷⁹ Roche said that on August 25, he thereupon sent a copy of a cover letter and résumé to Shatkoff and Puniak (GC Exh. 21) seeking employment on MOP. Roche said he received no response from either man.

⁷⁷ Roche identified GC Exhs. 7 and 8, copies of the letters he, Kraus, and Kondos sent to Hoffa in early August 2005.

⁷⁸ Roche said that the Groundswell Productions offices were located at the downtown Westin Hotel. Roche knew two of the office workers who introduced him to one of the producers, managers, Lee Ann Stonebreaker, to whom he gave his resume; the office workers touted him as the best (driver) in Pittsburgh.

⁷⁹ Scott testified that Roche could have contacted him on August 24, 2006, about working on MOP, because he talks to Roche off and on. Scott said in essence if the conversation occurred, he probably told Roche to speak to Shatkoff about employment on MOP.

According to Roche, he spoke to Scott once more and asked if he had heard anything (from the Union) about his working on MOP. According to Roche, Scott told him that he had heard nothing from the Union and that since time was running out, he should take another shot at the (union) hall.⁸⁰ Acting on this advice, Roche stated that he sent another cover letter and résumé to Shatkoff and Puniak on August 30 (GC Exh. 22). Roche said that he again received no response from either man.

In the meantime, Roche said that he also made a “barrage” of phone calls on August 25, and up to August 30, to Shatkoff and Puniak, leaving voice mail messages indicating his availability for work on MOP and beseeching a return call. Roche said neither Shatkoff nor Puniak returned his calls and, suffice it to say, he never worked on MOP.

Roche said that Smart People commenced production after MOP but at the time he was working on Goose Bumps, which had started production. Roche, asked by the General Counsel whether he would have accepted a job with Goose Bumps if he had been accepted for work on MOP, stated a definitive, “Hell No.” Roche said the production time for the two pictures would have paid more money. Moreover, Roche said that Goose Bumps was a video for children, that MOP and Smart People were feature films being produced by the same production company and, as such, would have given him the kind of exposure and experience he wanted for his own ambitions in the movie business.⁸¹

3. Michael Kondos

Kondos testified that he has been a member of Local 249 since 1998 and is and has been a member in good standing since then. Kondos said that he has never run for elected union office.

Regarding his involvement in the movie and film production industry, Kondos stated that his first movie driver job was for the film “Inspector Gadget” in 1998, on which project he was employed as a driver. Kondos said he has worked on a total of about 12 films and, since 2001, worked on about 7–9, which included “10th & Wolf”⁸² and “The War That Made America.” Kondos said his role on movie jobs was to operate various vehicles used to transport equipment used in the making of movies. Kondos said that he possessed a class B commercial driver’s license (CDL) and was qualified to drive any truck or vehicle weighing over 26,000 pounds such as stake trucks, box trucks, and movie star trailers—the kinds of basic equipment used on movie projects.

Kondos stated that he knew Kraus, who happens to be engaged to his sister, and also Roche, with whom he has been acquainted for about 10 years.

⁸⁰ Roche said he has known Scott since 1991 and enjoyed a cordial relationship with him, has his e-mail and his personal telephone number on speed dial. Roche says he also has done some painting work on Scott’s investment properties.

⁸¹ As noted, Roche testified about his personal interest in working directly in the movie business and said he had actually formed two companies in furtherance of that ambition. My impression was that he was trying to learn the ropes of this business and working with the two movies, as opposed to Goose Bumps, would have given him more experience in this regard.

⁸² Kondos stated that on his first day on the set, he was assigned to make a run to New Jersey to pick up equipment.

Kondos said that in 2005, he was interested in working on "Graduation" and called the union hall to inform Shatkoff of his availability for and interest in getting a job on the film. According to Kondos, Shatkoff told him that he was attempting to rotate (other) members on the movie jobs.⁸³ Kondos said that he was not hired for "Graduation" and that Shatkoff's comments about rotating people were to him merely an excuse to make the call as brief as possible, Shatkoff's usual way of dealing with him.

Kondos said consequently, he signed onto the letters that he, Kraus, and Roche sent to Hoffa.⁸⁴ Kondos stated that as far as he knew, Hoffa did not respond to the letter, at least not to him.

Kondos testified that around August 2006, he found himself unemployed, since his last film project, "Smith," had concluded. At the time he became familiar with the anticipated start-up of MOP and took steps to get employed on the project. Kondos said he contacted the hall and spoke to Shatkoff around August 26, 2006 (or perhaps August 28 or 29), and advised him of his interest in MOP and that he was currently available. According to Kondos, Shatkoff merely said "all right Mike," and ended the call with that. Kondos said that on this occasion also, Shatkoff was very "short" or brusque with him.

Kondos testified that he became aware of Smart People but was not available for his movie as he was then working on Goose Bumps, "The Haunting Hour." However, Kondos said that if given a choice between working first on MOP or Goose Bumps, he would have preferred to work on MOP because that assignment would have led to employment on Smart People.⁸⁵ Moreover, Kondos said that Goose Bumps did not run as long as MOP and Smart People so the financial opportunities were better on the two movies. Accordingly, he would have accepted a driver position on Smart People if he had been employed on MOP.

As an aside, Kondos stated that he believed he only obtained a Goose Bumps job because all the other available movie drivers were employed on MOP. Kraus, the Goose Bumps coordinator, had requested him for that project.

Kondos stated that when a movie is scheduled for Pittsburgh, his practice was and is to call the hall because Kraus told him always to call Shatkoff about his interest in a movie job. However, Kondos believed he was not hired for "Graduation" because Shatkoff was angry with Kraus, and he (Kondos) was known to be close to Kraus. He also noted that after "Graduation," he did receive some referrals to the movies out of Local 249 and, had, in fact, been referred in 2007. Kondos, however, believed that he only got referrals from the Union because Kraus (as coordinator) specifically requested him, and even when Kraus served as captain or coordinator, he did not get a job on a few commercial shoots.⁸⁶ Kondos stated that Kraus always tries to get

⁸³ Kondos acknowledged that in his Board affidavit he averred that "[Shatkoff] just said he understood but he did not refer me to that shoot." He said he could not explain why he did not include the rotation comment. However, he insisted that Shatkoff had indeed made the comment, recalling that he became annoyed over Shatkoff's attempt to bring in new people in disregard of his (Kondos') substantial experience. Kondos also stated that Shatkoff has not really rotated members to the movies but, instead, continues to use the same (favored) members all the time.

⁸⁴ Kondos identified GC Exh. Nos. 7 and 8 as copies of the letters he signed.

⁸⁵ In answer to my query, Kondos said that he found out through other union members that the MOP crew had been rolled over to Smart People.

⁸⁶ It should be noted that the film industry includes not only television pilots and feature films

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him work when he can. In fact, with Kraus' request, Kondos said that he worked on the "Smith" pilot, Goose Bumps, and "Bridge to Nowhere," a 2007 project.

Kondos believed that Shatkoff interfered with his getting a job on "Graduation" and MOP in particular. Kondos noted that while he knew Scott, the coordinator on MOP, he did not know him well enough to call him directly and ask for work. He admitted that he did not send a résumé to the MOP production office or even call. Kondos stated flatly that basically he did not call Scott because, as a rule, members were supposed to go through the union hall to get the movie jobs.

E. The MOP and Smart People Coordinator's View of Local 249's Referral System

1. Marc Scott

Marc Scott testified under subpoena on the last day of the hearing at the behest of the General Counsel.⁸⁷

Scott acknowledged that he was the transportation coordinator for MOP and Smart People, and has been a coordinator for about 50–60 movies filmed around the United States over the last 20 years. Scott stated that the transportation/coordinator is hired by the movie producers or movie studios to handle the transportation of personnel and materiel utilized on movie sets.

According to Scott, as a matter of practice when he handles a movie production, he will designate a number of key crew members for the filming effort and the union in question will send the balance of a crew. Scott said that he relies on the judgment of the union's business agent to send qualified drivers. According to Scott, this is the usual practice nationwide. Scott said that he prefers to maintain a favorable attitude and good working relations with unions. Accordingly, as a practical matter, he does not ask a union not to refer any particular person for a movie job.

Scott stated that his practice and procedure regarding hires beyond the selection of his key people is to inform the union in question of his manpower requirements for a shoot and leave the selection of the drivers to the union. Scott stated that he simply trusts the union's judgment to find the qualified drivers, except in the case of special equipment such as the production van and the honey wagon (sewage removal) truck, which demand certain skilled driver/operators. Scott said that he also checks the drivers' licensing status and they must pass a drug test. In general, Scott said that the local union usually provides the names of the drivers for the project and the name of the person it has designated as the transportation captain and/or co-captain.

but also commercial projects such as a Campbell's Soups commercial that was shot in 2006. Kondos could not recall who the Campbell's coordinator was but believes that Kraus served as the captain. Kondos said that this was the only shoot he could recall for which Kraus requested him, but he was not hired.

⁸⁷ Scott was not available at the beginning of the hearing in August 2007. The parties agreed that his presence would be helpful in resolving this case. In large measure, the adjournment until October 30 was to accommodate his schedule. I should note that Scott had provided a sworn affidavit to the Board's agent charged with investigating this matter, and the affidavit was received in evidence as GC Exh. 23.

Scott testified that over the years in his role as a movie coordinator, he met Kraus, Roche, and Kondos and has dealt in likewise with Shatkoff and Puniak, Local 249's representatives for the movies. Scott stated that Kraus has not only worked with him on seven to eight movies as a driver and transportation captain for the Union, but also has been employed as a coordinator for various producers. Roche, whom he has known for a while, has worked for him off and on over time; and Kondos has worked for him on about possibly two movies.

Directing himself to the ramp-up of MOP, Scott said that he was aware of the contract between the producers and the Union and, in fact, was given a copy. Scott stated that under this contract, he believed that all drivers had to be members of Local 249 when hired; if the applicant driver was not a member, he had to join the Union to remain on the project.⁸⁸

Scott said once the MOP contract was in place, he introduced himself to Puniak as a courtesy and later informed the Union who his key (core) people would be along with another driver whom the producers wanted, namely a man named Joe Rodgers who was requested by the set dressing department's leadman. Scott said his key people were his 14-year associate, Denny Braun, as set captain; Tommy McCue, a personal friend; Dan Dickman; Byron Rolland who drove a specialty vehicle—the production van—and Tom Weifenbach⁸⁹ who drove and operated the honey wagon (waste) truck, another specialty vehicle. Scott stated that Puniak approved of the five core people and the one driver for set dressing.

Scott said that the balance of the MOP crew—including the transportation captain—were all selected by the Union and sent to him to be hired; he had no role in the selection of the rest of the MOP transportation crew.⁹⁰

Scott said as a general matter, he tells the Union's transportation captain his manpower needs and the captain takes care of this matter. Scott stated that he could not recall speaking to anyone from Local 249 other than the captain, Tim McLaughlin, about his manpower needs for MOP.

Initially, Scott testified that he "may have" discussed with Puniak the possibility of Kraus, Roche, and Kondos' working on MOP but could not recall a specific conversation. Scott stated that once his core (key) group is in place, he does not concern himself with the other crew requirements; this is the job of the transportation captain. However, when presented with his affidavit in which he stated that he never discussed with Puniak or anyone else from Local 249 about the possible referral of the three alleged discriminatees for hire on MOP, Scott conceded that affidavit statement was more accurate. He stated that his practice with all locals is not to ask them to refer any specific person for hire (except his core people) and believed he did not ask for any specific persons for MOP. Scott said that in point of fact, however, he certainly did

⁸⁸ Scott cited as an example MOP driver Dan Dickman, an out-of-work friend who was not a union member at the time. Scott said he informed Puniak that Dickman was one of his core people and Puniak and Shatkoff approved of the hire once Dickman joined the Union.

⁸⁹ Weifenbach was approved as the operator of the honey wagon by the owner of the vehicle. The honey wagon is leased from a vendor who must approve the person selected to operate this piece of equipment. The production van also requires special expertise and the driver must be approved by the producer.

⁹⁰ Scott cited the example of a driver hired for MOP, Victor Najanick, whom he had never seen before he showed up for work on this movie.

not ask Puniak or anyone else from Local 249 not to refer Kraus, Roche, or Kondos, or any other person for that matter, to the MOP set.

5 Scott stated that the 11 drivers referred to him to work on MOP for the most part were "new" to the movie work as far as he was concerned and while he dealt with the captain, McLaughlin, not Puniak, Local 249 referred non-key drivers for the MOP crew.

10 Asked by the General Counsel whether he made a comment to Puniak about Kraus or Roche and Kondos to the effect that they needed to be hit in their pocketbooks, Scott said that he may have had an "off the record" conversation with Puniak in which he (Scott) made a similar remark in the context of a derogatory comment Kraus allegedly made about him and Denny Braun. Scott minimized this, saying that sometimes people have to learn when you hit them in the pocket but that this was merely (idle) conversation. He did not elaborate.

15 Scott, addressing the composition of the Smart People driver crew, stated that with few exceptions the MOP crew was carried over to this project with permission of the producers and Puniak of the Union.⁹¹ Scott said that he wrote a letter (GC Exh. 7) to the Union requesting the MOP crew because they had performed well. However, Scott said that he would have "respected" the Union's decision not to allow the carry-over had this been the case.

20 Scott also was of the view that if he had requested the services of Kraus, Roche, and Kondos, the Union would not have denied him and that if the Union had referred them to him, he would have accepted them for hire because he trusted the Union's judgment.

25 2. Dennis Braun

Dennis (Denny) Braun testified at the hearing and stated that he has been a member of Local 249 on and off for about 25 years and for the most part has earned his living in the movie business. Braun said that he has held the positions of transportation captain/co-captain, set captain, and driver on various movie projects.

30 Braun said that he was appointed by Scott as set captain⁹² on MOP in the summer and fall of 2006. According to Braun, Scott employs him in practically all of the movies for which Scott is the coordinator.

35 Braun stated that when he has served as transportation captain with Scott, Scott has always selected his core people; the balance of the transportation drivers for a movie is provided by the Union.

40 Braun said that he had known Kraus for about 15 years and that he is one of the people who consistently works in the movies. Braun stated that he also knew Roche through various movie productions and Kondos as well, but only for one production. Braun believed that Kraus was working on the movie Goose Bumps during the filming of MOP; he did not know whether

45 ⁹¹ Shown the Smart People driver timesheet—GC Exh. 6—Scott said this was basically the MOP crew except for Greg Holden, Dennis Quaid's longtime personal driver who was cleared by Puniak although he was not a Local 249 member, Chuck Long, and Tommy McCue who was working on another movie with Kraus.

50 ⁹² Braun described the set captain as one who manages the movie set while the transportation captain handles the other duties, mainly the driving duties of the transportation crew.

Roche or Kondos was available for this movie. However, Braun insisted that he has never told Scott not to hire a particular driver who had been referred by the Union to a movie shoot.

Regarding MOP, Braun noted that the transportation captain was Tim McLaughlin, who had most of the drivers in place by the time he (Braun) joined the production. Accordingly, Braun said he had no role in hiring drivers for MOP and did not specifically call any drivers to work on this movie.

Braun recalled a conversation with Kraus on the MOP set where filming was going on at a local cemetery, but could not specifically state that he mentioned to Kraus that the MOP crew was the worst he ever worked with but may have commented something to that effect that it was a new crew. (Tr. 418-19.)

F. Contentions of the Parties

1. The General Counsel

The General Counsel contends that the Union unlawfully operated an exclusive hiring hall for the movie drivers without utilizing any objective criteria in referring applicants for employment. He submits that Puniak, ostensibly in charge of the referral to the movies, even admitted that he selected persons without any specific criteria. The General Counsel asserts that Puniak (along with Shatkoff) basically rewarded favored members and denied drivers such as Kraus, Roche, and Kondos an opportunity for employment.

The General Counsel contends that the Union clearly operated an exclusive hiring hall, as demonstrated by the pertinent MOP and Smart People contract language, as well as through the course of conduct of the parties.

The General Counsel further contends that the Union, operating as exclusive hiring hall, failed and refused to refer Kraus, Roche, and Kondos for employment on MOP and Smart People for reasons other than their failure to pay dues and fees, thereby causing the producers of these movies to discriminate against them.

The General Counsel submits that there is no dispute that the three were in good standing with Local 249. He further submits that the record clearly shows that Puniak and Shatkoff deliberately refused to refer the three for employment on MOP or Smart People mainly because of their having engaged in protected activity—complaining about Shatkoff's operation of the hiring hall and seeking to reform it. He notes the retaliatory nature of the Union's conduct is clearly evident in Puniak's (acting under Shatkoff's instructions) referral of a contingent of inexperienced union favorites for MOP and later Smart People, while failing and refusing to refer the much more experienced Kraus, Roche, and Kondos who, out of work at the time, petitioned them for work, but were summarily ignored.

The General Counsel submits that Shatkoff and Puniak were simply determined to keep the three from working on MOP and Smart People because of the alleged discriminatees' dissident activities, and to discourage other members from "bucking" their authority by attempting to reform current operation of the hiring hall.

The General Counsel, in the alternative, contends that even if it were determined that the Respondent did not make referrals to the movie projects on an exclusive basis but, rather, operated a nonexclusive hiring hall, the Respondent, nonetheless, unlawfully discriminated against the three Charging Parties under 8(b)(1)(A) of the Act.

The General Counsel submits that Kraus, Roche, and Kondos were in point of fact not merely disappointed job seekers, but were members seeking redress and reform of the Union's job referral system as administered by Shatkoff with the assistance of Puniak. Prior to sending complaint letters to those in the International hierarchy, the General Counsel notes the three had seriously clashed with Shatkoff over his administration of the movie contracts, which then led to their being essentially blackballed, starting with "Graduation" and then subsequent films; Roche's filing of a Board charge simply added gasoline to the fire.

The General Counsel submits that in the aftermath of their action, the discrimination against Kraus, Roche, and Kondos became blatant, as evidenced by Puniak's admission that he was instructed by Shatkoff not to refer the three to any more productions, including MOP and Smart People, even at the risk of referring inexperienced drivers. Such was Shatkoff's desire to discriminate against them.

2. The Respondent

The Respondent first contends that the pertinent language covering employment in the MOP and Smart People contracts was administered by the Union in a manner consistent with a nonexclusive referral process. The Respondent asserts that on balance the contract's language, with one possible exception, is consistent with a nonexclusive referral process. The Respondent argues the exception—language that prohibits use of persons other than Local 249 members—was basically in place merely to collect dues from nonunion members hired to work on these movies. The Respondent notes that the contract's language that referral will in no way be affected by [union] membership or any aspect thereof is a clear indication that referral to the movies is not to be based on membership status, a key component of an exclusive hiring hall system.

The Respondent further asserts that the employer through the coordinator had the right of refusal for any driver referred by the Union, as evidenced by Kraus himself refusing a driver, Cunic. The Respondent also notes that the employer also had the right to designate its key people as well as those individuals who operated special equipment and were requested by third parties, including other unions, equipment lessors, movie actors, and other movie departments heads. All in all, the Respondent submits that the referral process employed by it was in practice a nonexclusive referral system.

The Respondent next contends that it did not discriminate against the three Charging Parties in retaliation for their having engaged in protected activity. Specifically, the Respondent asserts that the General Counsel has failed in his proof that the union officials' conduct was motivated by any unlawful animus.

The Respondent submits that Shatkoff credibly denied ever seeing the letters Kraus, Roche, and Kondos sent to the International and because these letters were not sent to the local. Puniak was in likewise unaware of them. On this score, the Respondent asserts there were no possible upset or lingering resentments over and against the three by the Union for sending the letters to the International.

Regarding Roche's charge filed with the Board, the Respondent contends that the matter was dropped almost immediately by Roche so that the charge could hardly support an inference of animus. The Respondent asserts that Roche's charge generated very little attention.

As to Roche's internal charge, the Respondent contends that, first, it was dismissed in September 2005; and second, Roche's follow-up efforts were deficient in themselves and insufficient to garner enough concern by the union leadership to support an inference that either Shatkoff or Puniak harbored an improper motive for not referring the three to MOP.

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Discussion and Conclusion

Beginning with the issue of whether the Respondent operated an exclusive hiring hall without any objective criteria for the referral of applicants to the pertinent movie projects, I would find and conclude in agreement with the General Counsel that Local 249 did operate an exclusive hiring hall for the movie drivers and that the hall was so operated without any objective criteria, in violation of Section 8(b)(1)(A) of the Act.

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As all the parties agree under Board law, an exclusive hiring hall essentially is one which requires, either by contractual agreement or practice, an employer to look to the hiring hall as the first source of employees—the employer essentially gives up the right to hire employees without first going to the union to supply workers for its projects. It is also agreed that in such cases, Board law requires the union to employ an objective criteria in determining those members to be sent out to the job in question.

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Turning to the pertinent parts of the contract negotiated by the Union and the producers of MOP (and Smart People), the Union was first recognized as the exclusive collective-bargaining representative of all the (driver) classifications (jobs) for the movie production(s). The contract specifically requires the Union to maintain a referral service for the hiring of drivers and the producers agreed to request referrals for all drivers from the Union, conditioned only by the Union's referring drivers on a nondiscriminatory basis and not affected by the drivers' membership in the Union. However, the producer gave up the right to use for transportation purposes anyone other than Local 249 members.

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As I interpret the contract, regarding the employment of movie drivers—those involved in "transportation purposes" (par. (b)(3))—the MOP producers clearly gave up their right to hire such workers from any source other than Local 249. In practice, the producers requested that their key people be hired, and it seems this request was uniformly granted by the Union.

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This interpretation of the contract, in my view, is supported not only by the practice of the Union and the MOP (Smart People) producers but also by the credible testimony regarding the origins of the contract provisions. Shatkoff testified that paragraph (b)(3) of the contract was adopted by the Union for inclusion in all movie contracts based on a similar contract used by a sister local that exclusively dealt with movie projects. Also, according to Puniak, the producers of "10th & Wolf," a 2005 film production, hired a nonunion member as a driver which caused grievances to be filed. The exclusivity language was then included in all subsequent movie contracts.

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In practice, as I view the credible evidence, the Union furthered the exclusive nature of its hiring hall referrals although not in a pure form. As noted, the producer—through the coordinator—in practice was free to select his key people but the coordinator still was required to request that his key people be allowed to work the project. Kraus, who had served as a coordinator and clearly Scott, the MOP coordinator, attested to this procedure.⁹³ To be sure,

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⁹³ I have credited Kraus' testimony about his practice and procedures while employed as a coordinator. He was not contradicted nor was his coordinator experience disputed by Shatkoff

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the Union always granted this request because this practice was evidently simply accepted in the industry. Nonetheless, the contract protocol required the producer to ask for permission to select his key people. In my view, this did not diminish the exclusive nature of the contract between the Union and the MOP producers. Rather, this would explain the contract's
 5 somewhat contradictory language calling for the Union's referral of work not be "affected" by membership in the Union.

Regarding the existence of objective criteria for the referral of members to the movie projects, there clearly was none worthy of the name, as the Respondent apparently concedes.
 10 Puniak's testimony regarding his handling of the referral process is set out in some detail herein, and will not be repeated here. However, suffice it to say, his contradictions and recantations notwithstanding, at best the referral "system" he employed was loose and informal, and actually discriminatory specifically against Kraus, Roche, and Kondos. There will be more on this latter point later.

15 In agreement with the General Counsel, I would find and conclude that the Union operated an exclusive hiring hall for the movie drivers for MOP (and Smart People) without utilizing any objective criteria in referring applicants for employment in violation of Section 8(b)(1)(A) of the Act.

20 Turning to the issue of whether the Respondent failed and refused to refer Kraus, Roche, and Kondos for reasons other than their failure to pay dues and fees and thereby causing the MOP (and Smart People) producers to discriminate against them, I would find and conclude in agreement with the General Counsel that the Union violated Section 8(b)(1)(A) and
 25 (2) of the Act by not referring the three to MOP, which in turn cost them a virtually assured placement on the set of Smart People.

First, I have determined that the Union operated an exclusive hiring hall without using any objective criteria for selecting members for referral to MOP (and Smart People). Second,
 30 there is no dispute that the three were members in good standing with the Union at the time they sought employment with MOP. Third, they were in varying degrees drivers experienced in the transportation aspect of movie production and available for work on MOP and would have been later for Smart People.

35 Puniak initially said that Scott did not want the three to work on MOP, that they had to be hit in their pocketbook. Puniak later recanted and admitted that it was Shatkoff who had instructed him not to refer the three to any movies. Scott, whom I might add was a very reluctant, but not untruthful witness, affirmatively denied that he told anyone in the Union that he did not want Kraus, Roche, or Kondos, or any specific person to be referred to MOP; that his
 40 practice was simply to accept all union referrals once he had selected his key or core people.

Given this evidence, the Respondent's ostensible reason for not referring the three to MOP—Scott did not want them hired—fails, and convincingly so in my view. The question
 45 remains as to why Kraus, Roche, and Kondos were not referred if indeed they were in good standing and vastly more experienced with the movies as compared to those whom the Union selected to work on MOP.

On this record, it seems clear that Kraus and Shatkoff did not get along. Kraus credibly testified that he and Shatkoff had a serious disagreement over staffing of the movies. According
 50

or Puniak. Scott likewise credibly testified on this subject.

to Kraus, Shatkoff believed that Kraus had basically usurped his authority in the hiring of movie drivers. Kondos seemingly got on Shatkoff's bad side because he was hired on a movie by Kraus without Shatkoff's permission and was known to be closely associated with Kraus.⁹⁴

5 Roche, for his part, was highly critical of Shatkoff's administration of the Union and wrote letters to this effect to the highest levels of the Union; he also filed a charge with the Board and attempted to file charges against Shatkoff with Local 249. Shatkoff and Puniak denied any knowledge of these matters, a simply incredible assertion in my view. The fact that all three Charging Parties wrote to Hoffa and others in the Union's upper echelons expressing their
10 concerns, often in scathing terms, about Shatkoff's administration of the Union. Shatkoff admits that he was copied at least in one instance about the complaints and had some conversations with union officials about the complaint. Puniak, as Shatkoff's surrogate, had to know of these issues.

15 Therefore, in my mind, I can only conclude that Kraus, Roche, and Kondos were not referred to MOP (and Smart People) for reasons other than their failure to pay dues and fees and caused the producers of those films to discriminate against them.⁹⁵

20 Finally, we turn to the issue of whether the Respondent discriminatorily failed and refused to refer Kraus, Roche, and Kondos for employment on MOP (and Smart People) in violation of 8(b)(1)(A). The General Counsel, as noted offered an alternative theory of the Union's liability under the Act, essentially that irrespective of whether the Union operated an exclusive or nonexclusive hiring hall, it unlawfully discriminated against the three.

25 In agreement with the General Counsel, and utilizing the *Wright Line* analysis, I would find and conclude that the Union unlawfully discriminated against the three Charging Parties.

30 In this regard, it is clear that the three engaged in concerted protected activity by writing individually (Roche) and collectively to the highest levels of the Union's hierarchy prior to their applications for referral to MOP. The correspondence in question—but specifically the August 3, 2005 letter to Hoffa—while stating their collectively personal complaint of ill treatment by Shatkoff, nonetheless, sought an investigation to protect the Union and its members and to uphold the "standards" of the local in its relationship with movie producers. Roche's charges filed with the Board, and the Union as well, certainly fall within the realm of protected activity. In
35 any case, there is no serious dispute that the three unionists engaged in protected and concerted activities stemming from what they viewed as improper conduct on Shatkoff's part.

40 Contrary to the Respondent, I would find and conclude that Shatkoff and even Puniak were fully aware of the complaints of the three prior to the start-up of MOP. I specifically find incredible their denials of any knowledge of either the letters or the substance of the complaints,

45 ⁹⁴ It should be noted that in spite of his testimony to the contrary, Shatkoff, in my view, has continued to exercise significant involvement and authority with respect to the Union's movie contracts. Roche testified credibly about Shatkoff's role as the aggressive protector of his members' rights. Puniak also said that he told Kraus, Roche, and Kondos that they had to get "straightened out" with him to get work. Shatkoff's controlling ways as a subtext also support my finding that the Union exercised exclusive control over the referrals to movie jobs.

50 ⁹⁵ I should note that nothing on this record indicate that the producers of MOP or Smart People did anything overtly discriminatory to the Charging Parties. They simply did not hire them because the Union refused to refer them.

or that the three were behind them. I categorically reject their defense of ignorance of these matters.

I also find and conclude the aforementioned activities of Kraus, Roche, and Kondos supply a sufficient basis for animus on the part of Shatkoff and Puniak not to refer them to MOP (and Smart People). Accordingly, I would find and conclude that the General Counsel has met his burden in establishing unlawful treatment of the three.

The Respondent (through Puniak) as noted initially defended its actions in not referring the three men because Scott refused to hire them. This, as previously noted, was proven to be untrue and, thus, this defense fails of its own weight, but also in context becomes a pretextual defense as I see it,

While not advanced specifically as a defense by the Respondent, there was some limited testimony from Puniak and Kondos that Shatkoff said to the effect that he wanted to have other members working movie contracts to rotate in other members, because Kraus was the main movie person who may not one day be able to perform, leaving the Union in the lurch as it were. This matter is worthy of addressing because as the Board decisions make clear, a union has considerable discretion in terms of making rules and procedures governing its operations. If indeed Shatkoff honestly wanted to rotate new members into the Union's movie business around the summer of 2006 when MOP was ramping up, this, in my view, would be a permissible action on his part, irrespective of the protected activities undertaken by the three. Also, this type of action would perhaps even serve as an objective criterion of a sort for purposes of the operation of an exclusive hiring hall.

However, Shatkoff specifically denied having even said this. Clearly, if this were the policy of the Union, it would have been announced formally to the membership.

Also, Puniak, who claimed to discuss the MOP referral issues with the three, never mentioned this to the three, even in the context of a general meeting of the members. Accordingly, this "defense" is not established in my mind, even if only obliquely offered.

I note in passing that evidently new people did indeed comprise the driver complement for MOP and later Smart People. However, as opposed to supporting any claim of rotating new and unexperienced people into the movie projects, I deem this as simply manifestation of Shatkoff's retaliation against the three Charging Parties who clearly were the more experienced and enjoyed a good reputation in the business and had a good working relationship with Scott.

I would find and conclude that the Union violated Section 8(b)(1)(A) of the Act by discriminatorily refusing to refer Kraus, Roche, and Kondos to MOP and thereby eliminating employment opportunities for them on Smart People.

Conclusions of Law

1. M.O.P. is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Smart People, Inc. is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Respondent, General Teamsters, Chauffeurs and Helpers, Local 249 a/w International Brotherhood of Teamsters (Local 249) is a labor organization within the meaning of Section 2(5) of the Act.

4. The Respondent operated an exclusive hiring hall or referral system whereby it referred applicants for employment with M.O.P. and Smart People beginning around August 1 until about October 31, 2006, with respect to M.O.P.; and beginning about October 25 until about December 25, 2006, for Smart People.

5. The Respondent operated the exclusive hiring hall without utilizing any objective criteria in referring applicants for employment in violation of Section 8(b)(1)(A) of the Act.

6. From about July 25, 2006, until on or about December 31, 2006, the Respondent failed and refused to refer for employment employees and members in good standing with the Respondent to M.O.P. and Smart People, Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr., causing MOP and Smart People to discriminate against them in violation of Section 8(a)(3) and (b)(2) of the Act.

7. The Respondent failed and refused to refer Kraus, Roche, and Kondos for employment with M.O.P. and Smart People for reasons other than the failure of the individuals to tender period dues and initiation fees uniformly required for membership in the Respondent, in violation of Section 8(a)(3) and 8(b)(2) of the Act.

8. From about July 25, 2006, until on or about December 31, 2006, the Respondent failed and refused to refer for employment employees and members in good standing with the Respondent to M.O.P. and Smart People, Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr. because they engaged in protected—dissident—activity in violation of Section 8(b)(1)(A) of the Act.

9. The unfair labor practices of the Respondent as set out above affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. The Respondent has not violated the Act in any other manner.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily denied Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr. referral for employment, I shall recommend that it be ordered to make them whole for any loss of earnings or benefits they may have suffered from about July 25, 2006, through December 31, 2006,⁹⁶ because of such discrimination, less any net interim earnings, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

⁹⁶ I leave to the compliance stage of the proceeding the determination of the period of the discrimination.

I further recommend that the Respondent be ordered to notify Kraus, Roche, and Kondos in writing that use of the Respondent's referral system will be available to them on an equal and nondiscriminatory basis with other employees and applicants, and to so refer them; and to take remedial action in accordance with the standards set forth in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Ferguson Electric Co.*, 335 NLRB 142 (2001). I shall also recommend that the Respondent be required to post appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹⁷

ORDER

The Respondent, General Teamsters, Chauffeurs and Helpers, Local 249 a/w International Brotherhood of Teamsters, Pittsburgh, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Operating an exclusive hiring hall without utilizing any objective criteria in referring applicants for employment.

(b) Failing and refusing to refer for employment employees for reasons other than the failure of the employees to tender the periodic dues and the initiation fees uniformly required for membership in the Respondent.

(c) Failing and refusing to refer employees for employment because they engaged in activities and exercised rights guaranteed them in Section 7 of the Act.

(d) Causing and attempting to cause employers to discriminate against its employees.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr. whole with interest for any loss of pay and benefits they may have suffered as a result of the Respondent's unlawful action as required by *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

(b) Within 14 days after service by the Region, post at its union office in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."⁹⁸ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's

⁹⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C. February 13, 2008

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Earl E. Shamwell Jr.
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT operate an exclusive hiring hall without utilizing any objective criteria in referring applicants for employment.

WE WILL NOT fail and refuse to refer for employment any employees for reasons other than the failure to tender the periodic dues and the initiation fees uniformly required for membership in Local 249.

WE WILL NOT fail and refuse to refer employees for employment because of their having engaged in protected activities and exercised rights guaranteed them under the Act.

WE WILL NOT cause or attempt to cause employers to discriminate against our employees.

WE WILL NOT In any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Donald Kraus, Kevin M. Roche, and Michael G. Kondos Jr. whole, with interest, for any loss of pay and benefits suffered by them as a result of our unlawful conduct.

GENERAL TEAMSTERS, CHAUFFEURS AND
HELPERS, LOCAL 249 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (Various
Employers)

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two Chatham Center, 112 Washington Place, Suite 510
Pittsburgh, Pennsylvania 15219-3458
Hours: 8:30 a.m. to 5 p.m.
412-395-4400.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 412-395-6899.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GENERAL TEAMSTERS, CHAUFFEURS
AND HELPERS, LOCAL 249 a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS (Various Employers)

and

Case 6-CB-11375

DONALD KRAUS, an individual

and

Case 6-CB-11376

KEVIN ROCHE, an individual

and

Case 6-CB-11377

MICHAEL G. KONDOS, JR., an Individual

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